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Constitutional Convention
Committee on Ordinances and
Transition
December 14, 1955

R. J. McNealy, Esq.
Chairman of the Committee
on Ordinances and Transition

Dear Sir:

MANNER OF ADMISSION

Under provisions of the federal constitution new states may be admitted by Congress subject to certain prohibitions which may tend to impair the existance of any other state. It is usually left to the discretion of Congress to determine the circumstances under which a state shall be admitted and the steps to be taken by the people of the prospective state to secure such admission.

See Anderson v. Tyree as reported in 42 Pacific Reporter, page 201. This action arose from a Writ of Mandamus directing the appellant as a registrar of voters with respect to the November election of 1895 which was to be held for the ratification or the rejection of the constitution and for the election of State officers for the proposed State of Utah. The question also brought up was to test the right of women to vote in the 1895 election. P. 204.

"The contention that congress cannot define the qualifications of voters for the first state officers, elected conditionally, while the territorial condition continues, because no such power exists as to the states, is clearly erroneous. It is too much like comparing the authority of a parent before and after the majority of his child. While the territorial condition continues, whatever political power its people exercise must be by authority of congress. In all governmental affairs, whatever the people of a territory do must be authorized, and they must abstain from

doing what is forbidden. Their elections, even on subjects relating to statehood, are territorial elections, and their voters are the electorate of the territory. In the compact for statehood, the people of the territory act for themselves and their successors, the people of the future state, and the latter are bound by the conditions accepted by the former; and it seems like stumbling on a small obstacle to say the people of the territory may bind the state forever to all the conditions and limitations to preserve the authority of the general government, and cannot, by the acceptance of a permission to elect the first state officers in advance of statehood, bind the state to this temporary and comparatively unimportant thing. If this cannot be done, the result is not that the people of the territory are sovereign as to this, but that the state will not be bound."

Under all circumstances it seems to be the unanimity of the authorities that it is absolutely necessary that Congress expresses its assent before a state can enter the Union and that a state does not come into existence until such assent is given.

This has been very fully covered in the case of People v. Brittle, 2 Nebraska Reports, p. 138; and has been cited in numerous jurisdictions. The case specifically held that the people of the territory cannot confer statehood upon themselves by the mere adoption of the proposed constitution.

There was some early authority which held to the effect that when a State was admitted to the union on the approval of Congress its constitution took effect from the date of ratification by the people (Scott v. Detroit Young Men's Society 1 Douglas, Page 119 Court of Michigan). The later cases however held that such principle was not applicable to Territories which are deemed to be under control of Congress until their admission to the Union and

that the time of taking effect of their constitution is ascertained from the construction of the enabling act.

Some authorities however hold that the constitution becomes operative upon the adoption of same by the people of the territory.

The Court of Appeals of Missouri in July 1910 has in unequivocal language made a distinction between constitutions taking effect upon ratification by the people as applicable to states and as applicable to territories. The case arose incident to the fellow servant rule governing personal injury actions. The Court stating on page 375 summarized its findings as follows:

Farrar v. St. Louis & San Francisco Railroad, 130 Southwestern Reporter, p. 374.

"The Constitution was adopted on September 27, 1907, at a general election held by the people for that purpose. The question is as to when the Constitution became effective, and it is to be determined by the enabling act of Congress (Act June 16, 1906, c. 3335, 34 Stat. 267), which provides that, in case a Constitution and state government shall be formed in compliance with the provisions of such act, the convention forming the same shall provide by ordinance for submitting such Constitution to the people of such proposed state for ratification or rejection; and it was further provided in said enabling act that; "If the Constitution and government of said proposed state are republican in form, and if the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States, within twenty days from the receipt of the certificate of the result of such election and the statements of the votes cast thereon and a copy of said Constitution, articles, propositions and ordinances, to issue his proclamation announcing the result of said election, and thereupon the proposed state of Oklahoma shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States."

"The accident therefore occurred at a date between the adoption of the Constitution and the date of the proclamation of the President, and the proposition does not seem open for difference of view that under the express terms of the enabling act, when the President issued his proclamation announcing the result of the vote and adoption of the Constitution, the proposed state of Oklahoma was admitted as a member of the Union of states, and that the territories then, and not until then, passed into the condition of statehood.

The general rule that Constitutions and constitutional amendments take effect upon their ratification by the people, unless otherwise provided in the instrument itself or the resolutions submitting them, applies to sovereign states possessing within themselves the power to make and unmake Constitutions, but can have no application to territories which, under our system of government, do not possess the power within themselves to initiate a separate form of government. The territories are under the absolute control of Congress, and can only become states and form for themselves laws or Constitutions in the manner pointed out in the enabling acts. Hence, the accident having happened on the 2d day of November, 1907, and the President's proclamation having been issued under the enabling act, on November 17, 1907, the defendant's liability is to be determined by the law in force in the Indian Territory at the time of the accident."

MANDAMUS AND EXTRAORDINARY WRITS

A case was instituted for a declaratory judgment incident to a Writ in Tennessee where Cummings, as Secretary of State, applied to the court for a declaratory judgment prior to enjoining the state Comptroller and the County Election Commission against releasing and paying funds for a constitutional convention to be held for the revision of the state constitution. The court in passing upon the question inter alia held as follows: (223 Southwest (2) Pg. 913, Tennessee Superior Court) Page 918

"There is no question in our mind but that if the Secretary of State had refused to carry out the requirements of the Act in question that then mandamus would lie to require him to submit to a vote of the people the question of the proposed amendments proposed by the Legislature. What can be the difference when the Secretary of State wanting to carry out his duties filed a suit himself against the necessary parties who have questioned the Act? As we view it the situation must meet the same answer provided the requisites hereinbefore set out are met in the proceeding."

Pg. 922
and
923

"The Legislature is merely the channel through which the proposed constitutional amendments are proposed for the peoples' consideration. The Legislature does not call the convention. The people call the convention. The controlling element in a situation of the kind before us, that is, when the Legislature proposes that the people have a right to vote on certain proposed propositions in amending their Constitution, is the popular approval of the legislative proposal. The legislative proposal becomes controlling only when it has the approval of the people by a majority vote. In State ex rel. McCready v. Hunt, 1834, 2 Hill, law, S.C., 1, 223 the court said: "It is true, the legislature cannot limit the convention; but if the people elect them for the purpose of doing a specific act or duty pointed out by the act of the legislature, the act would define their powers. For the people elect in reference to that and nothing else."

And as said in the case of Wood's Appeal 75 Pa.59, at page 72: "The right of the people to restrain their delegates by law cannot be denied, unless the power to call a convention by law, and the right of self protection, be also denied. It is, therefore, the right of the people and not of the legislature to be put by law above the convention, and to require the delegates to submit their work for ratification or disapproval. *** To estop them from their right to accept or reject the work of the convention, there must be an evident channel pointed out through which their power passed to the convention to ordain at pleasure a constitution or binding ordinances."

Daniel Webster in his argument before the Supreme Court of the United States in the case of Luther v. Borden, 7 How. 1, 12 L.Ed. 581, in arguing that the Legislature might propose to the people and the people

Measures - Research Material
Transitional

vote constitutional amendments, when there was no provision in the Constitution for it, after speaking of the established American doctrine of popular sovereignty, he said: "Another American principle growing out of this, and just as important and well settled as is the truth that the people are the source of power, is that, when in the course of events it becomes necessary to ascertain the will of the people on a new exigency, or a new state of things or of opinion, the legislative power provides for that ascertainment by an ordinary act of legislation *** It is enough to say that, of the old thirteen states, the constitutions, with but one exception, contained no provision for their own amendment. ***Yet there is hardly one that has not altered its Constitution, and it has been done by conventions called by the legislature, as an ordinary exercise of legislative power. *** We see, therefore, from the commencement of the government under which we live, down to this late Act of the State of New York, one uniform current of law, of precedent, and of practice, all going to establish the point that changes in government are to be brought about by the will of the people, assembled under such legislative provisions as may be necessary to ascertain that will, truly and authentically." Works of Daniel Webster, VI, 227-229. (Italics ours).

Further implementing what is said above the framers of our Constitution have provided by Section 1 of the Declaration of Rights: "That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of those ends they have, at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper." This may be found at page 179 of Volume 1 of the Code.

(13) The power to "alter, reform or abolish" the Tennessee Constitution resides in the people, not in the Legislature. The people are possessed with ultimate sovereignty and are the source of all State authority. The people have the ultimate power to control and alter their Constitution, subject only to such limitations and restraints as may be imposed by the Constitution of the United States. Cooley's Const. Limitations, 8th Ed., Vol. 1, page 84.

It is not the legislature who limit the scope of a convention but it is the people themselves who by their vote under the terms of this act limit the scope of the

"convention. The Constitutional provision above quoted does not prohibit the revision or amendment of a part of the Constitution by the convention method. The purpose of the Act here is to revise or amend the Constitution in the particulars indicated provided the convention called concludes that it is necessary to so amend and then if they so conclude the people have another right to vote as to whether or not these amendments, as set forth in a convention called, shall be a part of our Constitution. The thing that the people call a convention for is not to revise or to write a new Constitution but only a part thereof. The people having thus voted to circumscribe the limits of their elected convention delegates, in the particulars as provided for in the Act, bind these delegates within these limits."

The limitations, powers, and scope of constitutional convention has been ably discussed in a mandamus proceeding instituted in Missouri upon which the Supreme Court passed in banc. The case of State ex rel. News Corporation v. Smith, State Auditor, 184 South Western Reporter 2d Series p. 598 held: (Page 599 & 600)

"On September 29 a committee report, including an attached exhibit, was adopted. The exhibit was styled: "Ordinance. Manner of holding election submitting the proposed constitution of Missouri to the electors and fixing the date of said election."

The ordinance fixed the date of election, method of giving notice, method of conducting the election and making returns thereof. An appropriation was made to pay the cost of printing the "Address to the People" in pamphlet form and its publication in newspapers."

(1,2) On the first contention counsel argues that the manner of submission was completely and exclusively provided for in the ordinance and that the previous adoption of a committee report recommending publication of the "Address" cannot be considered as any part of the plan or manner of submission. In making this argument, we apprehend that counsel is confused by the constitutional restrictions imposed upon the General Assembly

"requiring it to act in a particular way. There is nothing in the Constitution requiring the Convention to proceed in any particular manner, that is, by bill or ordinance, nor is there any requirement that its plan for submission of its work must be merged into one ordinance or resolution. We see no inconsistency in the duly adopted committee report authorizing the publication of the "Address" and the ordinance providing the method of holding the election. They treat different phases of the same general subject and each is a part of the plan or "manner" in which the Convention purposed to submit its work to the voters.

In support of this contention counsel calls our attention to the manner in which various propositions are submitted to the voters by the General Assembly and to the provisions of Section 2 of Article XV of our Constitution governing the submission of constitutional amendments either by the General Assembly or by the initiative. But Section 3 of Article XV permits the Convention to submit its work in such manner as it may provide which means, of course, that it may adopt a different method from that provided for the submission of other propositions.

(5) Some effort is made to define the word "submit". It is contended that to submit means to present and leave to the judgment of the voters. Noland v. Hayward, 69 Colo. 181, 192 P. 675. That is true, but a proposition may be presented or submitted in various ways. A case is submitted to a court when it is finally left with the court for its decision, but it may be submitted, (1) on the pleadings, (2) on the pleadings and evidence, (3) on the pleadings, evidence and argument. Either of those methods constitutes the manner of submission.

We get little help from cases decided in other jurisdictions because they are based upon constitutional or statutory provisions which differ from ours, but so far as the cited authorities are pertinent they support the idea that to "submit" may include more than leaving the bare document to the will of the voters. For instance: In re Norton, 75 Misc. 180, 134 N.Y.S. 1030, 1032, says: "In this election everything necessary to reach the judgment of the qualified voters is a part of the submission; that is, all the proceedings preparatory to the election,

"the proceedings upon election day, including the count of the ballots, and the return." Hoar on Constitutional Conventions, p. 213 says: "* * * the general authority of the Convention over the manner of submission will include the date of election, the election officials" etc.

It is contended: (1) That the life of committees could not be extended beyond the final adjournment of the Convention; that when the Convention adjourned sine die its members became private citizens without power to incur indebtedness on behalf of the Convention; (2) that a suit now pending in the circuit court wherein a taxpayer seeks to enjoin respondent and another official from recognizing the validity of the voucher now under consideration bars us from jurisdiction in the instant suit.

(7) We concede the correctness of the abstract proposition that the life of a committee cannot be extended beyond the life of the body which created the committee. That is not the question here. If, as we hold, the Convention had the power to submit its work to the voters in such manner as it may decide, it had the power to appoint the persons to complete and carry out such submission. Although such persons are designated as a committee of the Convention, they are in reality agents of the State or of the public to supervise the expenditure of public money which has already been legally appropriated for a definite purpose. The General Assembly has, by law, created what it termed a Legislative Research Committee with functions after final adjournment. The Convention has, by proceedings which have the force of law, created a so-called committee to perform the public function of submitting its work to the voters in the manner provided by the Convention.

(8) The election to vote on the proposed constitution has been set for February 27. No final decision can be rendered before that date in the injunction suit pending in the circuit court. Due to the urgency for a speedy decision, that case not only fails to afford, but actually denies, adequate relief, to relator in the instant mandamus suit. We have jurisdiction.

On oral argument it was conceded that the Convention had power to publish the entire proposed constitution in

newspapers. We hold that it also had the power, as a part of its plan of submission, to publish the explanatory matter which constitutes the "Address to the People." The people granted that extensive power to the Convention by the adoption of Section 3 of Article XV of the Constitution. Whether that provision is wise or otherwise is not for us to say.

(9) The voucher having been issued in accordance with law, the respondent State Auditor is without discretion to refuse to approve it and to issue his warrant.

The proceeding in the case cited supra was commenced to compel the respondent, the State Auditor, to approve vouchers and issue payment warrants by the executive committee of the constitutional Convention in payment for publishing an article which was adopted by the convention called: "Address to the People".

This article was explanatory of the proposed constitution, was approved and provision made by the executive committee for the publication and also for the appointment of a Committee of Revision to complete the work of the convention when the convention adjourned sine die. Mandamus was granted.

There are a number of decisions on Mandamus, Writs of prohibitions, quo warranto and injunction following both, adoptions of constitutions as well as in cases where complete revisions have been made as a result of constitutional conventions. If I were to indulge in copious excerpts from the decisions, it would assume library proportions, it is therefore suggested (with the kind approval of your committee) that I merely accumulate the references to these citations as to volume and page numbers, so it may be used in the event an

occasion arises when some of these problems will probably be tested out in the courts.

I also have carefully studied the very brief 3-paragraph Act by which the State of California was admitted as a state and also the opinion of the Attorney General in 1855 reported in the early 5 California Reports commenting on such transition which was not in strict conformity with the other methods used by the various Territories in the Enabling Acts.

I shall await your committee's instructions on any further research you desire me to do.

Respectfully submitted,

Lazar Dworkin

Measures - Research - Transition of

Constitutional Convention
Committee on Ordinances and
Transition
December 8, 1955

R. J. McNealy, Esq.
Chairman of the Committee
on Ordinances and Transition

Dear Sir:

Additional research on the subject of transition, (outlined by your chairman) fully bears out the importance of adequately covering this topic.

In the light of past experiences of previous conventions it appears that this particular phase has given rise to more litigation than some of the fundamental principles embodied in the constitutional document proper. The conflict between the status quo of the old territory or state and the inaugural of the new has been giving rise to a number of complex questions forming the basis of such litigation.

A case rather illuminating on the subject which has been cited with approval arose in the State of Texas where, in an action on trespass to try out the propriety of a title to 120 acres of land, involving the validity of a Writ returnable between the period of the new court having jurisdiction over the return date of such Writ, and the former court issuing such Writ. The case of Best et al. v. Albright et al., 59 Southwestern, 891. The constitutional ordinance governing writs and process which was appended to the constitution read as follows:

"Be it ordained by the people of Texas in Convention assembled, that until otherwise provided by law, the terms of the District Courts of the several judicial districts shall be as hereinafter prescribed: ***

"Section 7. That the District Courts of the Seventh Judicial District be holden at the times hereinafter specified, to wit: * * *

In the County of Gregg, on the Eighteenth Mondays after the second Mondays In March and September, and may continue in session two weeks. * * *

"Section 27. All writs and process, civil and criminal, heretofore issued by or from the District Courts, in the several counties of this State, and made returnable to the former terms of said Courts, as said terms are now fixed by law, shall be returnable to the next ensuing terms of said District Courts in each county, as they are prescribed in this ordinance; and all such writs and process that may be issued by or from said courts at any time within five days next before the holding of the next ensuing terms of said courts, as prescribed herein, are hereby made returnable to said terms respectively; and all such writs and process hereinbefore mentioned are hereby legalized and validated, to all intents and purposes, as if the same had been made returnable to the terms or terms of said court, as the terms thereof are herein prescribed."

The court construing the effect of the ordinance stated on Page 894,

"(1) The term of court to which pre-existing and pending 'writs and process' were made returnable was altered to the later date, namely, 'to the next ensuing terms of said District Courts. *** as they are prescribed in this ordinance,' and (2) all such pre-existing and pending 'writs and process' were declared 'hereby legalized and validated, to all intents and purposes, as if the same had been made returnable to the term or terms of said courts, as the terms thereof are herein prescribed.' Such a general provision has, as was intended, the same effect as a saving clause in a repealing statute. A saving clause is intended to save something which would OTHERWISE BE LOST. Legal objection may not be predicated against such cumulative and remedial provisions. A provision of the kind, being only cumulative in its nature, could not operate to the legal injury of a defendant."

In the way of obiter dicta the learned judge makes interesting comment which in a sense is a re-embodiment and an expression of other courts as to the power and function of the constitutional convention, with respect to accomplish its objects: (Page 894)

"A constitutional convention is not a co-ordinate branch of the government, but is a body of representatives of the people convened only on special occasion, and for the purpose of revising or framing a Constitution. The powers it has are usually expressly conferred upon it, together with such implied (and inherent) powers as may be necessary to carry into effect those expressly conferred."

As to the transitional aspect and the force of the ordinances, the court stated as follows: (Page 895)

"As an ordinance appended to a Constitution newly adopted, which contains provisions for the adjustment of matters affected by the change from the old to the new Constitution, forms a part of the Constitution so far as its temporary purposes go, such ordinance may not prevail or supersede the provisions of the permanent part of the Constitution."

The latitude given to the Constitution was well expressed in Kemper v. Hawkins 1 Virginia, Cas. 20.

"Though the delegates chosen in 1776 who composed the convention that framed the Constitution of Virginia were not particularly instructed so to do, yet as their work was acquiesced in by the people, it became a fundamental law binding on all branches of the government of the state."

On the effect that the transition era may have on the Courts involving criminal actions the case of Ex Parte Toland reported 1880 in 54 California Reports, page 344 and subsequently cited has an enlightening bearing.

The petitioner, James Toland, who was tried in the City Criminal Court within and for the City and County of San Francisco, and duly convicted in July 1879 issued out a Writ of Habeas Corpus against the Sheriff on the ground that the process at the time of its execution was issued without authority, since the Court issuing the process enforcing the

judgment was newly created and the trial court was abolished by the 1879 Constitution, the Court however in dismissing the Writ with the following opinion stated as follows:

"In support of this view, counsel for petitioner relies upon Section 1470 of the Penal Code, which provides that, 'if appeal is dismissed or the judgment affirmed, a copy of the order of dismissal or judgment of affirmance must be remitted to the Court below, which may proceed to enforce its sentence'.

"In the present case this cannot be done, as the 'Court below' has gone out of existence under the provisions of the new Constitution, and therefore, it is argued, the prisoner should be discharged.

"It would be a misfortune if such were the case. The guilt of the defendant was determined by the verdict of a jury in the City Criminal Court, and the judgment rendered upon such verdict has been sustained by the Appellate Court; yet it is claimed that the machinery of the courts is left insufficient, under the operation of the new Constitution, to enforce the judgment. The Court will endeavor to find an escape from such a conclusion, and in this case there is no real difficulty in doing so.

"Section 1 of Art. 22 (Schedule appended to the Constitution) of the Constitution declares 'that all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted'. And Section 3 of the same article provides that 'all courts now existing, save Justice's and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such courts as are abolished by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the courts provided for in this Constitution; and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein'.

"On the 1st day of January, 1880, the County Court of the City and County of San Francisco went out of existence,

the Superior Court succeeding to its powers and jurisdictions. The case now under consideration was then properly before the Superior Court, and that Court had the same power and jurisdiction over it as it would have had if the case had been in the first instance 'commenced, filed, or lodged therein'."

The importance (when framing the ordinances, schedules or for that matter the fundamental articles incorporated in the constitution proper) and following the principle of stare decisis particularly in adopting wording of other constitutions was borne out in the case of Stine v. Morrison 9 Idaho Reports 26 where the Court held as follows:

"Where any constitutional provision or wording is borrowed or adopted from another state the courts of which have placed a construction on its language it will be presumed that it was taken in view of such judicial interpretation and with the purpose of adopting the language as the same had been interpreted by the courts of the state from which it was taken.

"A similar opinion was expressed in the case of Norfolk and West Virginia R. R. Co. v. Cheatwoods 103 Virginia 356 the Court stating 'where any constitutional provision of another state is incorporated in the constitution of this state, the court construction placed upon the provisions by the courts of such other state before its adoption here must be adopted in this state'."

ELECTIONS

The case of State ex rel. v. Moores et al. 7 Nebraska 48 involving dispute over an election of a City Judge and resulting in the institution of a peremptory writ of mandamus, the court held that an election provided for and required to take place by the adoption of the Constitution is self-operative.

The court quoting Section 18, Article 6 and Section 13, Article 10 of the Constitution relating to the general elections to be had under the new constitution stated as follows: (Page 1014)

"that the relator having been elected for a term of two years, to commence in January, 1896, at the regular election held in 1895, regular elections for police magistrate in the district comprising the city of Omaha should be held every two years thereafter; that the office and the district still existed in 1901; that the above-quoted provisions of the Constitution are so far self-enforcing that an election held to fill such office, participated in generally by the people of Omaha at the general election in 1901, was a valid election for that purpose."

I have analyzed and made a list of a great deal of cumulative material enunciating some of the doctrines held by the courts on various subjects. A great deal of the material is purely cumulative and I wish to solicit an expression of an opinion from your Committee as to whether you desire such additional material and also any other questions not covered in the submitted memoranda.

Respectfully submitted,

LAZAR DWORKIN

Constitutional Convention
Committee on Ordinances and
Transition
December 5, 1955

R. J. McNealy, Esq.
Chairman of the Committee
on Ordinances and Transition

Dear Sir:

Following the outline submitted in your Memorandum of November 28, 1955, I have carefully researched the numerous decisions affecting the subject matter embodied in your suggested list.

I have shepardized the decisions with the view of arriving at the ultimate findings indicating which of such decisions have been affirmed, reversed or modified.

The influx of litigation that followed the adoption of Constitutions in some of the States have brought about some very interesting opinions by the Judges and arose as a result of practical actual problems that came before the courts not theoretical or hypothetical questions but solely from litigation where either a direct attack was made on controversial questions or a collateral attack by litigants who elected to invoke some remedies with respect to the validity of the new provisions.

ORDINANCES

The word "Ordinance" has been interchangeably used with the word "Schedules" and has been referred to in Judges' opinions under the same definition.

In the case of Mann et al vs. Osborne et al, reported in 261 Pacific, page 146, Judge Reid, speaking for the Supreme Court of Oklahoma clearly defined the distinction between ordinances as

temporary provisions and constitutional provisions as fundamental laws embodied in such documents. Page 148

"Ordinances and Schedules appended to a Constitution, as distinguished from the permanent and fundamental law embodied in the Constitution itself, are temporary enactments for the purpose of effecting a transition from the old government to the new, and of putting the provisions of the new Constitution into effect."
12 C. J. 696

"In order that no inconvenience may result by reason of changes arising out of the adoption of a new Constitution, it is the custom to adopt a Schedule which will set forth temporary regulations covering the interim before the new machinery of government is thoroughly established. The only office of a Schedule is to provide for the transition from the old to the new government and to obviate confusion which would otherwise arise during the transition period, and this fact may be material in determining the construction and effect to be given to provisions contained in schedules." 6 Ruling Case Law 36.

The preamble to the Schedule to the Constitution of this state fully defines its purpose and office in the following language:

"In order that no inconvenience may arise by reason of a change from the forms of government now existing in the Indian Territory and in the territory of Oklahoma, it is hereby declared as follows:"

(1) In the case of State ex rel. West, Attorney General, v. Frame, 38 Okl. 446, 134 F. 403, this court has defined the office of the Enabling Act, and also the Schedule of the Constitution of this state, in the following language:

"The purpose of the Congress in the Enabling Act, and the Constitutional Convention in the Schedule was to provide the temporary means necessary for putting the government established by the Constitution in motion without disorder or collision, and not to provide a permanent system of laws for the government of the new state" and this purpose is "stated in the preamble to the Schedule."

In the Richmond, Virginia Mayoralty Case reported 19 Grat. 673, the Supreme Court of the State of Virginia had under consideration

the question of certain provisions in the ordinances of the Constitution of that state under which the State had returned to the Union after the Civil War. In construing the meaning of such ordinances the chairman held a Convention in framing a schedule and ordinances should plainly show that such provisions are subject to future legislation and are provisional in its nature.

The case of the State ex rel. Reardon, Co. Atty., v. Scales, Mayor, et al., reported in 97 Pacific, page 584 arose as a result of a proceeding instituted in the form of a Writ of Mandamus on the part of the State of Oklahoma on the relation of the County Attorney of Oklahoma County where the question of the constitutional ordinances affecting elections was before the court, the Court stated as follows: "There is absolute harmony to the effect that a Convention assembled for the purpose of framing a constitution for the state has inherent right to adopt ordinances that it might deem proper."

As a most lucid distinction between the permanent provisions of the Constitution itself and the ordinances as employed with relation to constitutional conventions the case most decisive and which has been cited with approval in a great number of decisions is Frantz v. Autry 91 Pacific, page 193. The Court on page 191 stated as follows:

"The distinction between a Constitution and an ordinance is this: The Constitution is the permanent fundamental law of the state. It is of a stable and permanent character. As is appropriately said in Vanhorne v. Dorrence, 2 Dall. (U.S.) 308, Fed. Cas. No. 16,857, 1 L. Ed. 391: "The Constitution of a state is stable and permanent, not to be worked upon by the temper of the times, nor to rise and fall with the tide of events. Notwithstanding the competition of opposing interests, and the violence of contending parties, it remains firm and immovable, as a mountain amidst the strife of storms, or a rock in the ocean amidst the raging of the waves." But, under the terms of the enabling act, it is prospective in its operation only; that is, it does not become operative

until it is ratified by the people and approved by the President of the United States. On the other hand, an ordinance, as used in this act, refers to a merely temporary law; its object being to carry into effect the formation of the Constitution and fundamental law of the state, to provide a mode and means for an election of a full state government, including the members of the Legislature and five representatives to Congress, and becomes operative immediately upon its adoption."

The same case sheds a great deal of light on the powers and functions of the delegates and the constitutional convention and the un-abridged rights conferred in formulating such constitution. Page 204

"Judge Story, in his work on the Constitution (volume 1 (5th Ed.) 338), declares: "The true view to be taken of our state Constitutions is that they are forms of government ordained and established by the people in their original sovereign capacity to promote their own happiness and permanently to secure their rights, property, independence, and common welfare." Judge Cooley, in his work on Constitutional Limitations, on page 68, in discussing the attributes and objects of a Constitution, says: "In considering state Constitutions, we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. What is a Constitution, and what are its objects? It is easier to tell what it is not than what it is. It is not the beginning of a community, nor the origin of private rights. It is not the fountain of law, nor the incipient state of government. It is not the cause, but consequence, of personal and political freedom. It grants no rights to the people, but is the creature of their power, the instrument of their convenience." In 1894, the state of New York had under consideration the revision of its state Constitution. One of the first questions that arose in the convention was the ascertainment of the rights and powers of the convention to pass upon the election and qualifications of one of its members. This question was referred to the judiciary committee, of which committee the Honorable Elihu Root, now Secretary of State, and one of the ablest lawyers and statesmen of this country, was chairman. In his report to the conven-

tion he says: "The convention has been created by the direct action of the people and has been by them vested with the power and charged with the duty to revise and amend the organic law of the State. The function with which it is thus charged is a part of the highest and most solemn act of popular sovereignty, and in its performance the convention has and can have no superior but the people themselves. No court or legislative or executive officer has authority to interfere with the exercise of the powers or the performance of the duties which the people have enjoined upon this, their immediate agent." And, again, in stating the nature of a constitutional convention, he says: "A constitutional convention is a legislative body of the highest order. It proceeds by legislative methods. Its acts are legislative acts. Its function is not to execute or interpret laws, but to make them. That the consent of the general body of electors may be necessary to give effect to the ordinances of the convention no more changes their legislative character than the requirement of the Governor's consent changes the nature of the action of the Senate and Assembly." And, again, in speaking of the importance of the independence of the convention, he uses this language: "It is far more important that a constitutional convention should possess these safeguards of its independence than it is for an ordinary Legislature, because the convention's acts are of a more momentous and lasting consequence, and because it has to pass upon the power, emoluments, and the very existence of the judicial and legislative officers who might otherwise interfere with it. The convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the convention would be wholly incompatible with the free exercise of that will." See Proceedings of the New York Constitutional Convention, 1894, pp. 79, 80.

In Sproule v. Fredericks, 11 South. 472, 69 Miss. 898, The Supreme Court of Mississippi, in discussing the powers of the convention says: "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. The sole limitation upon its powers is that no change in the form of government shall be done or attempted. The spirit of republicanism must breathe through every part of the framework, but the particular fashioning of the parts of this framework is confided to the wisdom, the faith-

fulness, and the patriotism of this great convocation, representing the people in their sovereignty. The theorizing of the political essayist and the legal doctrinaire, by which it is sought to be established that the expression of the will of the Legislature shall fetter and control the Constitution-making body, or, in the absence of such attempted legislative direction, which seeks to teach that the constitutional convention can only prepare the frame of a Constitution and recommend it to the people for adoption, will be found to degrade this sovereign body below the level of the lowest tribunal clothed with ordinary legislative powers."

Page 207 Autry Case. "The power of the convention to revise and amend the Constitution was not a delegated power derived from the Legislature, but it derived its power directly from the people. And in the performance of the powers and duties and obligations resting upon the convention it could have no superior but the people themselves. Manifestly, to hold otherwise would be to degrade the powers of the convention below the level of the lowest legislative or municipal body. Clearly, such are not the office, functions, and powers of the constitutional convention.

TRANSITION

An interesting question arose in the State of Minnesota which was acted upon in the case of Secombe v. Kittleson, Treasurer reported in 12 Northwestern, page 519.

This matter arose on a restraining order attempting to enjoin the State treasurer from paying out of the funds of the State interest to become due upon the bonds of the State of Minnesota, alleging certain irregularities with respect to constitutional provisions, the Enabling Act, and the manner of admission into the Union. The court, passing on the question when a Territory ceases to be a state. In commenting on the importance of recognizing the sovereignty of the people stated as follows:

"The question as to when a territory ceases to be such and becomes a state, and as to when the constitution and governmental machinery of a new state goes into operation, is one upon which not even courts and constitutional lawyers are agreed. One theory is that a territory continues in all respects a territory until admitted into the Union by act of congress, and that until such act of admission the proposed state constitution cannot take effect, nor any part of the machinery of a state government go into operation. Another theory is that where, under an enabling act of congress, the people adopt a state constitution and form a state government, such constitution goes into effect upon its adoption by the people, and that the former territory thereby becomes a state although not in the Union, for the purposes of representation in congress, until formally admitted by congress. A third theory, which is really only an extension of the one last named, is that an enabling act operates as a constitutional act of admission, and that when a state complies with the conditions of that act she is a state in the Union for all purposes without any further action on the part of congress. See Scott v. Young Men's Society's Lessee, 1 Doug. (Mich.) 119; Campbell v. Fields, 35 Tex. 751."

"As ultimate sovereignty is in the people, from whom all legitimate civil authority springs, and inasmuch as in the inception of all political organizations it is this original and supreme will of the people which organizes civil government, a court has no right to inquire too technically into any mere irregularities in the manner of proposing and submitting to the people that which they have solemnly adopted and subsequently recognized and acted upon as part of the fundamental law of the state."

The revised constitution of 1879 for the State of California appended to it what they termed an ordinance or schedule with respect to "the laws continued in force, the obligations, rights, causes of action, and the judicial system."

That no inconvenience may arise from the adoption of the new constitution and to carry same into complete effect the schedule, ordinance decreed as follows, with respect to:

1. Laws continued in force
2. Obligations, rights, causes of action, etc. unaffected.
3. Courts; abolishment; transfer of records.
10. Terms of officers first elected.
11. Laws relative to judicial system continued in force.
12. Effective dates.

1. LAWS CONTINUED IN FORCE

Section 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, 1880, unless sooner altered or repealed by the Legislature.

2. OBLIGATIONS, rights, causes of action, etc., unaffected.

Section 2. That all recognizances, obligations, and all other instruments, entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality

thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

3. COURTS: ABOLISHMENT: TRANSFER OF RECORDS.

Section 3. All courts now existing, save justices' and police courts, are hereby abolished; and all records, books, papers, and proceedings from such courts, as are abolished by this Constitution, shall be transferred on the first day of January, 1880, to the courts provided for in this Constitution; and the courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

10. TERMS OF OFFICERS FIRST ELECTED.

Section 10. In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided

by law. Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that state officers are elected.

11. LAWS RELATIVE TO JUDICIAL SYSTEM CONTINUED IN FORCE

Section 11. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

These provisions were upheld in the cases of People v. Bank of San Luis Obispo (1908) 97 P. 306, 154 C. 194 and the case of Fraser v. Alexander (1888) 16 P. 757, 75C. 147; Hastings v. Young (sup. 1888) 17P. 530; People v. Colby (1880) 54C. 184, 5 P.C.L.J. 14; Ex parte Toland (1880) 54 C. 344, 5 P.C.L.J. 182; and Learned v. Castle (1885) 7 P. 34, 67 C. 41.

May I take the liberty in suggesting to your committee that the research for proposed points shall be narrowed down to specific issues avoiding the necessity of going too far afield or going off into a tangent which may have no bearing on the subject matter.

In the absence of any specific instructions I was not certain as to whether the style followed by me is in accord with your method of procedure. I have therefore covered and analyzed only a part of the questions certified by your chairman. I shall cheerfully adhere to any suggested change by your committee.

Respectfully submitted,

Lazar Dworkin

Constitutional Convention
IV/Ordinances/3
December 9, 1955

RESEARCH MATERIAL

from

Committee on Ordinances and Transitory Measures

Admission of states without prior enabling acts, election of
Representatives and appointing Senators before admission and similiar
information as recorded in the Library of Congress.

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ELECTION OF CONGRESSIONAL DELEGATIONS PRIOR
TO THE ACCORDING OF STATEHOOD

I. Introduction

Fifteen geographical units of the United States entered the Union without the prior authority of enabling acts. Nine were organized Territories: Arkansas, Florida, Idaho, Iowa, Kansas, Michigan, Oregon Tennessee, and Wyoming. Four had been parts of other States, and were admitted as separate entities; these were Kentucky (fashioned from territory formerly within the jurisdiction of Virginia); Maine (from Massachusetts); Vermont (from New York); and West Virginia (from Virginia). Another political entity--Texas--was an independent republic prior to its annexation by the United States; and its "enabling act" was incorporated in the joint resolution of annexation, part of which states: "...First, said State to be formed...; and the constitution thereof, with the proper evidence of its adoption by the people of said Republic of Texas, shall be transmitted to the President of the United States, to be laid before Congress for its final action, on or before the first day of January, one thousand eight hundred and forty-six..."^{1/}

Still another geographical unit, California, was an unorganized area subject to the hegemony of a United States Army general who served as de facto governor.

^{1/} Act of March 1, 1845 (5 Stat. 797 Sec.2).

It appears that in six of these areas--Michigan, California, Oregon, Tennessee, Kansas, and Iowa--Representatives and Senators were elected to the national Congress before such areas were formally admitted to statehood. In a seventh area--the Territory of Minnesota--Senators and Representatives were elected after the passage of an enabling act and the framing of a constitution, but before the Territory was allowed to become a State.

One of the most curious phenomena associated with the history of these areas and Territories prior to their acquisition of statehood was the relative indifference with which Congress and the people--within the interested areas and throughout the Nation--reacted to the election of congressional delegations prior to admission to statehood of the areas which they were to represent. At no time was such action considered revolutionary or even excessively "audacious". In some quarters it was regarded as clever or unseemly or not quite "cricket", but no one apparently became unduly exercised. One hundred and nineteen volumes of local history (very few contemporary newspapers are housed in the Library of Congress) were examined in an effort to ascertain popular attitudes; and to capture congressional viewpoints, local histories, political biographies and memoirs, and the Annals of Congress, the Register of Debates, the Congressional Globe, and numerous congressional Journals and Reports were perused. From such studies the present reviewer has concluded that partisan political considerations, the terrible division engendered by the slavery controversy, and the question of adequate population were immeasurably more important than "premature" elections as issues in the debates on statehood.

II. Admission of the Bold

A. Tennessee

Tennessee originally constituted the "western territory" of North Carolina. In 1789 North Carolina ceded the area to the Federal Government; in April of the next year Congress accepted the cession,^{2/} and in the following month passed an act for the government of the "Territory south of the River Ohio."^{3/} Until its entry into the union, the area was to be known popularly as the "Southwest Territory".

Sentiment for statehood, widely manifested from the beginning of territorial status, forced an initially reluctant governor to call for the election of delegates to a convention for the purpose of drafting a state constitution. On January 11, 1796, the delegates convened; on February 6, 1796, their work was finished. Before adjourning, on the latter day, they unanimously approved their handiwork. "They did not submit it (the constitution) to the people for approval, but themselves decreed it to be in effect."^{4/}

Three days after the convention closed, Territorial Governor William Blount dispatched a letter to Timothy Pickering, U.S. Secretary of State, in which he advised the Secretary that Tennessee anticipated early admission to the family of States.

'As Governor, it is my duty, and as President of the Convention, I am instructed, by a resolution of that body, to forward to you, express, a copy of the constitution formed for the permanent government of

^{2/} 1 Stat. 106.

^{3/} 1 Stat. 123.

^{4/} Hamer, Philip M., ed. Tennessee: A history, 1673-1932. New York, American Historical Society, Inc., 1933. V. 1. p. 170-172.

Transitional Measures - Research Material

the State of Tennessee, which you will herewith receive by the hands of Major Joseph McMinn...

'The sixth section of the first article will inform you that the first General Assembly to be held under this constitution is to commence on the last Monday in March next. The object of the Convention, in determining on this early day, is a representation in the Congress of the United States before the termination of the present session....'5/

The new legislative assembly convened under the authority of the constitution on March 28, 1796. It chose William Blount and William Coker as United States Senators and provided for the election of two Members of the national House.^{6/} Less than two weeks later President Washington submitted the new Tennessee constitution to Congress, without recommendation but with implied approval:

'By an Act of Congress passed on the 26th of May, 1790, it was declared that the inhabitants of the Territory of the United States south of the River Ohio, should enjoy all the privileges, benefits and advantages set forth in the ordinance of Congress for the government of the Territory of the United States northwest of the River Ohio, and that the Government of the said Territory south of the Ohio, should be similar to that which was then exercised in the Territory northwest of the Ohio, except so far as was otherwise provided in the conditions expressed in an Act of Congress, passed the 2d of April, 1790, entitled "An Act to accept a cession of the claim of the State of North-Carolina to a certain district of Western Territory.

'Among the privileges, benefits and advantages thus secured to the inhabitants of the Territory south of the River Ohio, appear to be the right of forming a permanent Constitution and State Government, and of admission, as a State, by its delegates

5/ Ramsey, J.G.M. The annals of Tennessee. (Kingsport, Tenn., Kingsport Press, 1926). p. 659-670

6/ Abernethy, Thomas Perkins. From frontier to plantation in Tennessee a study in frontier democracy. Chapel Hill, The University of North Carolina Press, 1932. p. 138.

(Senators and Representatives), in the Congress of the United States, on an equal footing with the original States, in all respects whatever, when it should have therein sixty-thousand free inhabitants; provided, the Constitution and Government so to be formed, should be republican, and in conformity to the principles contained in the articles of the said Ordinance.^{7/}

....

On May 6, 1796 the House of Representatives adopted a resolution to admit Tennessee. The favorable vote was not unexpected: the House predominantly Jeffersonian, expected, and correctly so, that Tennessee would support the Jefferson ticket in the election of 1796. The Federalist Senate, however, employed delaying tactics and Tennessee was forced to wait nearly a month before acquiring statehood.^{8/}

In the meantime, Mr. Cocke, Senator from Tennessee, had put in an appearance in the Nation's capital. His arrival, it appears, inspired some degree of hostility and ridicule, but hardly indignation. One of the few manifestations of ill-will is to be found in a letter from Chauncey Goodrich to Oliver Wolcott, penned May 13, 1796:

One of their spurious senators has arrived, and a few days since went into the Senate and claimed his seat, by virtue of the credentials from our new sister Tennessee, as she is called, and the rights of man. As the former was a new kind of coin, and the latter has been often declared, and even counterfeited by rogues and rascals, a majority of the up stair folks determined to take time to inspect both, and with some difficulty persuaded the bearer to leave them. Mr. Burr and his associates are quite zealous for a declarative resolution of their present right. ... No doubt this is one twig of the electioneering cabal for Mr. Jefferson.

^{7/} Ramsey, J.G.M., *Op. cit.*, p. 670

^{8/} Hamer, Philip M., *Op. cit.*, p. 180; Williams, Samuel C. The admission of Tennessee into the Union. Nashville, The Tennessee Historical Commission, 1945. p. 15-21.

It probably originated from the quarter where much mischief is brewed. It threatens disquiet to that country, and vexation to the government.^{9/}

On May 6, 1796 the House adopted a resolution to admit Tennessee; eight days later, however, the Senate refused to concur. On May 23 the Senate received communications from Blount and Cocke to the effect that they were legally entitled to seats as Senators.^{10/} Their arguments proved unavailing; the Senate refused to recognize them as Senators, and instead, ordered that they "be received as spectators, and that chairs be provided for that purpose until the final decision of the Senate shall be given on the bill proposing to admit the Southwestern Territory into the Union." The motion carried, by a vote of 12 to 11.^{11/}

The Senate, predominantly Federalist and fearful of Republican influence in Tennessee, happily adopted on May 26 a committee report which declared that "Congress must have enacted in advance that the whole of the North Carolina cession be one State before the inhabitants thereof could claim admission into the Union, and that, had the formation of the whole of the territory into one State been authorized by Congress, the census ought to have been taken under the authority of Congress."^{12/} (A census had been taken earlier, but under the authority of the Territory).

But the Senate, under the wily politicking of Aaron Burr, friend of Thomas Jefferson, finally agreed to a compromise proposed by the statehood proponents in the House to the effect that Tennessee be admitted,

^{9/} Gibbs, George, ed. *Memoirs of the Administrations of Washington and John Adams*, edited from the papers of Oliver W. Olcott. New York, printed for the subscribers (by William van Norden, Printer, 1846). p.338-339. Goodrich was a Connecticut Representative; Wolcott was Lt. Governor of Connecticut.

^{10/} Hamer, Philip M., *Op. Cit.*, p. 180-181.

^{11/} *Annals of Congress*, U.S. 4th Congress, 1st Session. p. 103.

^{12/} Hamer, Philip M., *Op. cit.*, p. 180-181.

but that her representation in the House be reduced to one Member instead of two.^{13/} On June 1, 1796 the statehood bill was approved by the President, and Tennessee became the sixteenth State.^{14/}

Immediately before the session closed (on June 1, 1796), and on the very day that Tennessee entered the Union, Senator Alexander Martin of North Carolina moved that Blount and Cocke, who had produced credentials, be seated as Senators. The motion was defeated by a vote of 10 yeas to 11 nays.^{15/} The two Houses earlier had agreed that the election of members to either branch of the national legislature was not valid until such election has been definitely sanctioned by the Federal Government. Governor Sevier, therefore, had to call a special session of the legislature to stage another senatorial election and to provide for the election of one congressman. Blount and Cocke were again elected Senators, while Andrew Jackson won in the popular contest for United States Representative.^{16/}

B. Michigan

Pursuant to an act of the Michigan territorial legislature, an election of the delegation to a constitutional convention was held on April 4, 1835. The delegates assembled in May and concluded their labors on June 24, 1835. In the ratifying election conducted in October of the same year, 6,299 votes out of a total of 7,658 were cast in favor of

^{13/} Williams, Samuel C., Op. cit., p. 22-25.

^{14/} 1 Stat. 491.

^{15/} Annals of Congress, v. 5, 4th Congress, 1st Session. p. 120-121.

^{16/} Abernethy, Thomas Perkins, Op. cit., p. 138-140

adopting the constitution. At the same time, a governor and a State legislature were elected; and Isaac E. Crary was elected as Michigan's first Representative in the national Congress. ^{17/}

On November 2, 1835, the date set by the constitution, the State legislature convened, and proceeded to elect two United States Senators: Lucius Lyon and John Norvell. Each, however, was to wait more than a year--until January 26, 1837, the day Michigan was finally admitted to statehood--before being accorded a seat.

Two factors were especially responsible for delaying statehood. The congressional delegation from Ohio deeply resented Michigan's refusal to be conciliatory in a boundary dispute over the Toledo area (later awarded to Ohio) and reacted by opposing Michigan's admission to statehood. The second major cause for delay stemmed from the slavery issue forcing a "pairing" of Michigan and Arkansas as potential States. ^{18/}

"Not only did the opponents of admission delay action on Michigan's case, but they seized upon every opportunity to air their grievances, to incite prejudices, and to alienate support. Such an opportunity presented itself in the opening days of the session (the first session of the 24th Congress began December 7, 1835) when Michigan's representative and senators appeared with requests for recognition. As had been anticipated, these requests were denied, and the state found itself at a critical period without an official representative in Congress. But hardly less important were

^{17/} Michigan Constitutional Convention, 1835. The Michigan Constitutional Conventions of 1835-36; debates and proceedings. Edited by Harold M. Dorr. Ann Arbor, The University of Michigan Press, 1940. p. 14-32.

^{18/} Ibid., p. 33-35

the consequences of their appearances before the houses. The very fact that they represented themselves as duly elected members of Congress afforded her enemies an opportunity to question Michigan's status and openly criticize her course of action. The opposition maintained that to accord special privileges to Lyon, Norvell, and Crary would be equivalent to an act of admission and an acceptance sub silento of Michigan's boundary claims and the 'right-to-admission' arguments. ..."^{19/}

On December 10, 1835 Senator Thomas H. Benton of Missouri moved that the courtesy of the Senate be extended to the "new" Senators by assigning seats to them. After several objections were presented, essentially on the ground that admission to seats might signify the right of the gentlemen to such seats, the motion, on December 15, 1835, was tabled.^{20/}

In the House, Representative Samuel Beardsley of New York introduced a motion, late in December of 1835, that the Representative-elect from Michigan be permitted to take a seat on the floor of the House during the proceedings of that body. A few days later, on December 30, he amended the motion to the effect that Mr. Crary be permitted merely to enter the hall "in the character of a spectator." Mr. Beardsley reminded his colleagues of the precedent established in the case of Tennessee. After objection to the motion was made, the rules of the House were suspended,^{21/} by a vote of 133 to 47; and his motion was then tabled.

^{19/} Ibid., p. 35-36.

^{20/} Register of Debates, v. 12, 24th Congress, 1st Session. p. 8-11.

^{21/} Register of Debates, v. 12, 24th Congress, 1st Session. p. 2102-2103.

On June 15, 1836 an act of Congress admitting Michigan was approved,^{22/} provided that a redefining of her boundaries (to Ohio's advantage) be accepted by a Michigan convention established to pass upon this question. A convention was duly formed, but it refused to comply with the demands of Congress. A second convention was then elected, and it finally agreed to the boundary settlement. Its message of assent was forwarded to the President, who transmitted it to Congress. Both Houses thereupon approved^{23/} the new statehood bill, and on January 26, 1837 the President signed it.

C. Iowa

The movement in Iowa for statehood began in 1839. The people at that time were opposed to admission; they were satisfied with the amount of liberty they enjoyed under territorial status, and they believed they were not ready for the increase in taxes which statehood would entail. In 1844 Iowa had grown in population and wealth to such an extent that popular opinion changed in favor of statehood. In October of that year a state constitution was drafted and immediately forwarded to Washington, before the people had an opportunity to ratify it. In Congress, consideration of statehood for Iowa was coupled with the question of admitting Florida. The same bill provided for the admission of both Territories. It was the established custom for Congress to admit new States in pairs; and the free Territory of Iowa was paired with the above Territory of Florida to maintain the balance. But when the Iowa portion came up for debate, free state advocates demanded that the Territory of Iowa be carved into

^{22/} 5 Stat. 49.
^{23/} 5 Stat. 144.

at least three States. The boundaries of Iowa consequently were reduced, making the Territory about two-thirds its present size. Congress thereupon approved the bill and the President signed it on March 3, 1845.

When news reached the people that Congress had voted for statehood but had trimmed Iowa's boundaries, many of those who had supported statehood turned against the movement. The constitution, as a result, was rejected. In May 1846 another constitutional convention was called. Meanwhile, the Territorial Delegate succeeded in having Congress agree to compromise on the boundary question. The boundaries accepted by Congress were the same as those insisted upon by the new convention and thus the last hurdle to statehood was cleared. ^{24/}

On August 3, 1846 the new Iowa state constitution was ratified by the slim margin of 456 votes out of a total of 18,528 cast. The general state election was held October 26, 1846. "That the election might be declared void because the United States had not yet officially admitted Iowa as a State does not seem to have occurred to anyone and the election was duly held." ^{25/}

In this election, the Governor and two Representatives to Congress (as well as other officials) were chosen. The representatives-elect were S. Clinton Hastings and Shepherd Leffler. They were in Washington the day Iowa was admitted (December 28, 1846), ^{26/} they took their seats the next day.

^{24/} Petersen, William J. The story of Iowa; the progress of an American State. New York, Lewis Historical Publishing Co., Inc., 1952. V. 1, p. 336-346.

^{25/} Ibid., p. 346-348. Underlining supplied.

^{26/} 9 Stat. 117.

Iowa was denied representation in the United States for nearly two full years--until December 7, 1848--simply because the state legislators insisted upon playing politics to a rather fanatical extreme. ^{27/}

D. California

Mexico ceded California to the United States in 1848 under the terms of the Treaty of Guadalupe Hidalgo. California thereupon was subjected simultaneously to military law, Spanish law, and American law. Much of the time, nevertheless, there was no law at all. The gold rush brought in its wake so many undesirables that vigilante groups became much in evidence. The great influx of population, with its attendant problems, quickly inspired a demand for stable, civilian government. ^{28/}

On June 3, 1849 General Bennet Riley, Governor of California, issued a proclamation calling for a constitutional convention. Election of delegates was held August 1, 1849; the convention assembled at Monterey on September 1, 1849.

According to the Riley proclamation, California's government at that time was not a military one inasmuch as the only military officer connected with the government was the Governor himself; and his acts stemmed from his capacity as civil governor, not as a brigadier general.

The convention closed on October 13, 1849; on November 13 of the same year a general election was held to ratify or reject the newly drafted constitution, and to elect a governor, lieutenant governor, two congressmen, and the members of the state legislature.

^{27/} Petersen, William J. *Op. cit.*, p. 348-349; Cole, Cyrenus. Iowa--through the years. Iowa City, The State Historical Society of Iowa, 1940. p. 187-188.

^{28/} Caughey, John Walton. California. New York, Prentice-Hall. 1940, p. 329-332; Hicks, John D. The Federal Union. Boston, Houghton-Mifflin, 1937. p. 532-541; Federal Writers' Project. California: a guide to the Golden State. New York, Hastings House (1949). p.52-53.

Edward Gilbert and George W. Wright were elected as California's first Representatives, even though the area still had not attained statehood. A month later, the new legislature elected John C. Fremont and William M. Gwin as United States Senators.^{29/}

In January 1850 the California delegation left for Washington to urge that the new "state" be granted immediate admission. The presence in Washington of the Californians was "regarded by some of both sections, but especially by the south, as unwarranted, even impertinent."^{30/}

And

in February [1850], and before [Henry] Clay presented his resolutions, the senators and representatives elected from the new state of California . . . presented a carefully prepared memorial, apparently written by [Representative-elect Edward] Gilbert, in which they reviewed the history of the new state. . . . A state government, and such a system of measures as a state legislature alone could enact, was imperatively necessary. The neglect of Congress had forced California to form such a government. Its people had in no way been urged to it by General Riley; but on the contrary, had themselves taken the initiative, accepting his suggestion only as a matter of convenience and to save time. . . . They did not present themselves as supplicants, nor with arrogance or presumption. They came as free American citizens -- citizens by treaty, by adoption, and by birth -- and asked for a common share in the common benefits and common ills, and for opportunity to promote the general welfare as one of the United States.^{31/}

When California's bid for Federal recognition was received by Congress, an eight-months' debate was touched off. Proslavery congressmen bitterly fought the admission of a new free State. Statehood opponents charged,

^{29/} Eldredge, Zoeth Skinner, ed. History of California. New York, Century History Co. [1915?], p. 278-374.

^{30/} Bancroft, Hubert Howe. The works of Hubert Howe Bancroft, v. 23. History of California, v. 6. San Francisco, The History Co., Publishers, 1888. p. 342.

^{31/} Eldredge, Zoeth Skinner, op. cit., p. 395-396.

among other complaints, that the new "state" and its constitution had been "concocted" by President Taylor through Governor Riley, and that Californians as a group comprised ill-mannered adventurers and ruffians who had not bothered to wait for an enabling act. The South was so strong in its denunciation of the proposed admission that talk of secession was heard in more than one Southern State. Before hotheads could precipitate the Civil War, Henry Clay offered his famous "deal," and the Union was saved for another decade. As a result of this Compromise of 1850, California, on September 9, 1850 (9 Stat. 452), was admitted as a free State while New Mexico and Utah were created Territories without mention of slavery.^{32/}

E. Oregon

When Oregon came up for admission in 1858, a number of Republicans in Congress opposed the move. They pointed out that the proposed state constitution barred free negroes from immigrating into the prospective state; that the population was insufficient; and that an enabling act had not been passed. A far more sincere objection stemmed from political considerations. The Democrats in Congress wanted Oregon to come in, despite the probability that it would do so as a free state, simply because the new state would bring two more Democrats into the Senate and add one in the House. The Republicans did not enjoy the prospect, especially on the eve of a Presidential election. Many Republicans, moreover, were distressed by the behavior of the Delegate from Oregon, Joseph Lane. Lane was a Democrat, but Oregon Democrats were not

^{32/} Caughey, John Walton. Op. cit., p. 330-332; Hicks, John D. Op. cit., p. 535-541; Federal Writers' Project, Op. cit., p. 52-53.

expected to be sympathetic to the slavery interests. Lane, however, sided, and not too secretly, with the ultra-Southern leaders, even going so far as to support the infamous Lecompton Constitution of Kansas. Some Republicans in the House therefore insisted that Oregon, which might return a proSouthern delegation as a result of Lane's influence, wait until Kansas could shed itself of its corrupt proslavery elements and enter the Union with a Republican delegation. ^{33/}

The Oregon constitutional convention assembled on August 17, 1857; it adjourned September 18, 1857. The resultant constitution was voted upon in a special election held November 9, 1857. The vote revealed 7,195 persons favorably disposed, with 3,215 in opposition. The constitution itself provided that, once the instrument had been ratified, another special election was to be held in June 1858 for election of members of the legislative assembly, of state and county officers, a Representative in Congress, etc. It also called for a special session of the new legislative assembly to be convened in July 1858 for the purpose of electing two Senators to the national Congress.

Lafayette Grover was elected as a Representative in the June 1858 election; and the next month the state legislature chose Joseph Lane and Delazon Smith as United States Senators. Smith and Grover left immediately for Washington, in anticipation of early admission of Oregon to statehood; Lane, Territorial Delegate, was already at the Nation's capital. ^{34/}

^{33/} Bancroft, Hubert Howe. History of Oregon. San Francisco, The History Co., Publishers, 1890. V.2, p. 423-441.

^{34/} The Oregon constitution and proceedings and debates of the constitutional convention of 1857. Edited by Charles Henry Carey. [Salem, Oregon, State Printing Department, 1926]. P. 27-41.

In May 1858 the Senate passed the Oregon statehood bill. Very few Republicans voted for it. The Democrats assented because they wanted to increase their voting strength in Congress and in the Electoral college. ^{35/} Before the House could reach a vote, the session adjourned -- in June.

While awaiting the reconvening of Congress, the Oregon hopefuls "diligently sought out and interviewed the members of both houses, and were eager to get their seats and to begin drawing their pay." ^{36/} In a letter he wrote in November 1858 to a friend back in Oregon, Delazon Smith revealed his own activities on behalf of statehood and the reaction in Washington to such efforts:

'You may bet high on the admission of Oregon early in the session. I have seen every member now in the city, and you better believe I have "labored" with them! Everybody is for us. The sergeant-at-arms of the Senate has had desks, chairs, etc., made for the Oregon senators, and they will occupy them before the close of the tenth day of the session. . . . I must say, in all candor, that I derive but very little satisfaction from the perusal of our Oregon papers. It requires more labor here in Washington to counteract the influence of the Oregon press than it does to meet and vanquish all its other enemies! If we talk about the admission of Oregon, the payment of our war debt, etc., we are told to look at the declarations contained in the Oregon newspapers! ^{37/} [A number of Oregon newspapers, including the influential Salem Statesman, held that the Territory's population was too small to merit statehood. ^{38/}

Back in May 1858, Senator Alfred Iverson of Georgia indicated that he detected nothing reprehensible in a Territory electing Senators and Representatives prior to the attainment of statehood, provided the Territory could boast a "representative" population:

^{35/} Ibid., p. 41-46; Bancroft, Hubert Howe. Oregon. Op. cit., p. 439-441.

^{36/} Oregon constitution. Op. cit., p. 45.

^{37/} Ibid., p. 47. Underlining supplied.

^{38/} Ibid., p. 46-47.

[Oregon] can order a census, and between now and then it can be ascertained whether she has the representative population or not, and then we can admit her. In the meantime the State may, if she has the requisite number of people, go on and elect her Senators and Representatives to Congress in advance of her admission, as Minnesota did, and has been done heretofore by other States, and we could finally admit the State at the next session, having the requisite population, and we could permit her Senators and Representatives to take their seats. ^{39/}

The House finally approved the statehood bill on February 12, 1859, but only after a group of fifteen Republicans decided that admission was preferable to keeping Oregon subject to the possibility that proslavery interests would triumph in the Territory. ^{40/} Two days later, President Buchanan signed it into law. ^{41/}

F. Kansas

Kansas and Nebraska both became Territories by the Act of May 30, 1854. It was understood in many quarters that Kansas would develop into a slave state and that Nebraska would remain free: the balance of power between the free and slave factions would thus be preserved. The hope was short-lived. A virtual civil war erupted between the "Free-Soilers" and proslavery elements. Each faction elected its own legislature. Gradually the proslavery party lost its influence, and by 1859 the Free State group secured the upper hand. In these turbulent years three constitutions, including the notorious and fraudulent

^{39/} Congressional Globe, 35th Congress, 1st Session, May 5, 1858, p. 1967.

^{40/} Bancroft, Hubert Howe. Oregon. Op cit., p. 439-441.

^{41/} 11 Stat. 383.

Lecompton Constitution proposed in 1857 by proslavery interests, had been framed but not ratified by the electorate. A fourth constitution was finally drafted by a fourth convention (the "Wyandotte"), and on October 4, 1859 was accepted by the people in a popular referendum; affirmative ballots constituted a majority of 4,891 votes out of a total cast of 15,951.^{42/}

On November 8, 1859 a Territorial election was held to choose again a Delegate in Congress (Kansas had been represented for some years by a Delegate) as well as a new Territorial legislature. Then, on December 6, 1859, an election was held for State officers, a State legislature, and a Representative in Congress. "Thus was made ready a State Government for Kansas."^{43/}

There was no "premature" election of Senators by the legislature; the Territorial legislature continued to function until statehood became a reality; the State legislature, which was scheduled to perform the task of selecting the Senators, was purposely held in suspension until after the Territory's admission to statehood.

In the election of December 6, 1859, Martin F. Conway was elected to the national House of Representatives. Apparently, he did not leave Kansas for Washington in December 1859; it is likely that he did not appear in the capital city until shortly before Kansas was admitted to statehood.^{44/}

^{42/} Federal Writers' Project. A Guide to the Sunflower State. New York, Hastings House [1942]. P. 47-53; Spring, Leverett Wilson. Kansas: the prelude to the war for the Union. Boston, Houghton-Mifflin [1907]. P. 264

^{43/} Connelly, William E. History of Kansas: State and people. Chicago, The American Historical Society, Inc., 1928. V. 2, p. 597.

^{44/} Spring, Leverett Wilson. Op. cit., p. 264.

In January 1861 Congress passed the bill providing for the admission of Kansas as a free State, and on January 29 of the same year the President signed it.^{45/} The passage of the bill was made possible by the withdrawal of the proslavery Southerners from the Congress on the eve of the war between the States.^{46/}

^{45/} 12 Stat. 126.

^{46/} Federal Writers' Project. Kansas. Op. cit., p. 52-53

William R. Tansill
Analyst, American National
Government
Government Division
October 7, 1955

C O P Y O F T E L E G R A M

January 19, 1956

William A. Egan, President
Constitutional Convention
College, Alaska

Following message from me is based upon many and repeated requests I make public my position regarding Tennessee Plan and I transmit it to you because it is my understanding Constitution Convention is giving consideration to Plan:

"Many times during the last several months I have been asked to give my opinion as to whether Alaska should adopt the so-called Tennessee Plan in an effort to promote the cause of statehood. Paralytic reluctance to state that opinion until this time has been based upon a number of reasons. Chiefly, perhaps, I desired to make at least a preliminary estimate of statehood attitudes in the second session of the 84th Congress in conjunction with the president's 1956 State of the Union message. Paralytic Further, I wanted additional time to make a reasonable evaluation of the Tennessee plan's chances of success in the mid-20th century, remembering that many, many years have gone by since it was last used. Whether or not it can be translated to these times with equal effectiveness is, of course, that which only the future will definitively disclose. Paralytic A more positive statement can be made as to the probabilities of attaining statehood now by the

traditional approaches. Those prospects are bleak. No hopeful sign has presented itself from any source since this session of Congress began earlier in the month and he would be an optimist indeed who would predict favorable action soon. Para So the cause of statehood is not advancing now. Indeed, there are those who suggest that interest is tending to decrease rather than increase and that unless a stimulating factor is added Alaskans may have to wait long before coming into the day when statehood is attained. Para The Tennessee plan could provide that stimulating factor, its impact could jar the nation and the Congress from lethargy. The election and sending to Washington of two United States senators and a representative in the house might provide the fulcrum needed to jar statehood from dead center, or to use another metaphor, might be the instrument to remove the key long creating the jam. Para after talking with many members of Congress, after making a very careful analysis of the situation in general, I am convinced that if Alaska were to adopt the Tennessee Plan practically all statehood supporters in Washington would welcome this active demonstration of Alaskas determination to win a rightful place in the union of states; and whatever resentment at this bold but certainly not unique approach which might be felt, or expressed, would be far more than outweighed by the benefits. Para In

summation, I am bound in candor to state that without the Tennessee Plan a combination of circumstances, not at this time to be readily foreseen, will be needed to bring statehood soon. Para If the Tennessee Plan is adopted it might well shorten the long road to statehood. I can see distinct possibility of gain; I see only remote possibilities of loss. Para The Tennessee Plan has elements of the daring and the imaginative attractive to the people of a frontier land as has been made apparent to me by the many expressions of support from Alaskas for the proposal. Para It is my understanding that the Tennessee Plan is before the Constitutional Convention now in session at the University of Alaska. If adopted there, it will be presented to Alaska voters for final determination in April. As one who through the years has had an abiding conviction that statehood more than any other one thing is essential for Alaska for its own sake and for the sake of the nation I am bound to support any just and reasonable and American way to hasten statehood's coming. The Tennessee Plan is such a way."

Para with the above statement of my own position, I desire to add that if the Constitutional Convention and the voters in April decide to try the Tennessee Plan, it will have my continuing support.

by E. L. BARTLETT

GEO. H. LEHLEITNER & CO.

INCORPORATED

601 SOUTH GALVEZ STREET
P. O. BOX 1097

NEW ORLEANS
ZONE 4

PHONE CANAL 9131

January 16, 1956

To the Honorables, the Members of the
Alaska State Constitutional Convention:

Had Alaskan distances been less formidable, or could I have "stretched" my vacation, I would have been privileged to meet and share these views with each of you on my October visit to your magnificent area. These are the conclusions reached in eight years of labor in behalf of statehood for Hawaii and Alaska, and have been prepared in this form at the suggestion of you with whom it was my privilege to have discussed them.

Briefly stated, it is my deep conviction that unless Alaskans, THEMSELVES, initiate some action which will advance their cause more effectively, statehood will remain a will-o-the-wisp, perhaps for the remaining lifetimes of you who read these pages. In justification of this statement, may I suggest that while the past ten years have revealed that there are many additional impediments to statehood, the chief obstacles seem to have been these:

Every postwar Congress has been very closely divided between Democrats and Republicans. In such a situation it is almost impossible for one major Party to force its will upon the other in issues involving partisan considerations. While statehood, properly, should not be a partisan matter, realism prompts one to recognize that Congress has permitted it to degenerate into exactly that.

Nor is the situation apt to change materially in the near future. Almost every political scientist expects the next Congress to again be closely divided. And the next. As a matter of fact, such IS the traditional American Congress; generally it has taken some earth-shaking event, such as a major depression or a great war, to disturb this pattern and provide a top-heavy majority for one Party.

Too, a closely divided Congress is "made to order" for a tightly knit minority group -- and we now know that statehood's most dedicated opponents are precisely that. Under these circumstances, such a group will invariably wield the balance of power; particularly if its membership holds a majority of the vital Congressional control posts. Especially is this true when a substantial segment of the proponents of a measure are either lukewarm or unstable in their support.

In the present Democratic Congress, anti-statehood Southerners, though representing less than 25% of the country's population, hold 11 of the 16 key committee chairmanships in the House, and 7 out of 12 in the Senate. Moreover, the Majority Leader of the Senate, as well as the Speaker of the House, and the

Chairman of the all-important Rules Committee of that body, are ALL Southerners. . . . and outspoken opponents of statehood!

Therefore, should the Democrats control the next Congress, is it not reasonable to expect a continuation of the status quo? The South's single party system will certainly insure the return to Washington of most, and perhaps all, key incumbents. I am even more certain there will not be any diminution in the intensity of their anti-statehood zeal!

Even were those presently holding committee chairmanships and other key positions to pass from the political scene, the picture would not be altered materially, as the Congressional Directory reveals that opposed Southerners also occupy 16 of the No. 2 spots on the 28 basic Congressional committees!

Nor can the passage of any reasonable period of time, alone, be expected to soften the opposition of most of these men. From my vantage point as a third generation Southerner, I believe I can fully understand the basis for their opposition, even though I do not share it. They are NOT wanton obstructionists. Rather are they a group of ultra-conservatives who earnestly believe that the best interests of the South would be jeopardized by an expansion of the Congress, and of the Senate in particular.

Nor has Southern opposition to the Union's expansion come into being coincidental with the blossoming of Hawaii's and Alaska's statehood aspirations. Instead, it is a tradition that predates the War Between the States. Only when this fact is clearly grasped can one fully comprehend why it is that not even the possibility of Alaska AND Hawaii sending 100% Democratic delegations to both Houses of Congress would, of itself, reconcile those men to the admission of either area.

It occurs to me that I should point out that Hawaii is no longer the rock-ribbed Republican bastion of former years. Indeed, a study of voting trends in Hawaii will quickly convince one that within a relatively short time it is almost certain to become a nominally Democratic area. Which is another way of saying that if statehood is deferred until this presumption becomes an actuality, the Republican Party in Congress would then be faced with the probability that admission of both areas would buttress only the Democratic Party. A further stiffening in many Republican Members' opposition to Alaska would, inevitably, follow.

Should the Republicans capture the next Congress, and/or the Presidency, would it not seem logical to conclude that the majority of the Members of Congress in that Party, the President, and the House Minority Leader, Mr. Martin (who, in such an event, would probably again be Speaker), will continue to obstruct Alaskan statehood? Add to their opposition that of the Southern bloc previously discussed, and there becomes apparent the reasoning behind my sober belief that instead of steadily inching TOWARD statehood, we've been

drifting farther AWAY from it. In support of this contention, may I respectfully point out it is generally conceded that several Congresses ago we came within one vote of statehood. The gap has never since been so small!

Another handicap Alaska and Hawaii must hurdle is this: When new states were added previously the House of Representatives made room for their Representatives by expanding its membership accordingly. In 1929, however, House membership was "frozen" at its prevailing strength, 435. Thus it is that before a Representative votes "aye" on a statehood bill he must reconcile himself to the possibility that the new state's admission may cost his state a seat (perhaps his own!) when reapportionment next rolls around.

It is my considered judgment that the infrequency with which this objection is raised is not an accurate index of its significance. True, Congress IS at liberty to increase House membership beyond 435 by passing a bill to this effect. It has also been at liberty to pass a statehood bill -- but it hasn't! And because all efforts to expand its membership, since 1929, have met with failure it must be conceded that this is a very real hurdle.

But bleak as this analysis paints the scene -- and I do not believe it exaggerates the difficulty of the situation -- I hasten to say that there also appears to be a decidedly brighter alternate route to statehood. . . . if Alaskans will but take it!

For an intensive study of the histories of other American Territories -- especially those that, like Alaska, had found themselves repeatedly ignored or rebuffed by Congress -- prompts the equally strong belief that an effective action DOES lie within the power of Alaskans. . . . IF they and their leaders, and especially the Members of this Constitutional Convention, want statehood badly enough to pursue it with the boldness, the ingenuity, and the dedication applied by an earlier generation of American pioneers in Tennessee, Michigan, Oregon and California.

In each of these four cases, their citizens' pleas for Constitutional self-government had also fallen upon deaf or ineffectual Congressional ears. . . . until the delegates to their Constitutional Conventions, by means of a life-giving clause WRITTEN INTO THE DOCUMENTS THEY FASHIONED, precipitated the action that achieved statehood within two years thereafter!

Their story is, to me, all the more fascinating because it is not commonly known that FIFTEEN American areas entered the Union without the authority of prior Congressional enabling acts. And, because the circumstances that preceded the admissions of Tennessee, Michigan, California and Oregon offer many parallels to those which, today, prevail as regards Alaska, it is hoped that the historical happenings related in the pages that follow will hold particular interest for you, the Members of Alaska's Constitutional Convention.

I would not leave you with the impression that these pages have stemmed solely from my own interest and research. While it is true that I have long since lost count of the historical volumes personally examined in pursuit of this unique

approach to statehood, there have been two far more significant studies made on this subject, and it is from these that the bulk of my documentation has been drawn. The earlier of the two was made in 1951 by the University of Hawaii's Dr. Robert M. Kamins. It is a most excellently prepared document of 49 fact-filled pages.

The second study was made this summer by the Library of Congress' Legislative Reference Service. It was conducted by Dr. William R. Tansill, and its well-documented nineteen pages attest to the accuracy of the statement made in its introduction that

"One hundred and nineteen volumes of local history were examined in an effort to ascertain popular attitudes; and to capture Congressional viewpoints, local histories, political biographies and memoirs, the 'Annals of Congress', the 'Register of Debates', and 'Congressional Globe' (predecessor to the 'Congressional Record'), and numerous Congressional Journals and reports were perused."

I also wish to record my very great obligation to Senator Russell B. Long, of Louisiana, at whose request the Library of Congress made the intensive study referred to in the preceding paragraph.

A debt is also owed Dr. William R. Hogan, Chairman, Department of History, Tulane University of Louisiana, for his encouragement, suggestions, and, most particularly, for his having edited my manuscript.

Lastly, I wish to acknowledge my obligation to Mrs. Allen Lewis, my secretary, for her indefatigable labors, over the years, in the interest of statehood.

If I were to compress into one sentence the moral to be drawn from the case histories of other statehood-seeking Americans discussed herein, it would be this: Working on the assumption that the full citizenship possible only in statehood was their natural entitlement, they boldly acted accordingly... and, without exception, their areas **BECAME STATES!**

Sincerely yours,

GEO. H. LEHLEITNER

GHL:jl
Attach.

THE WASHINGTON POST
and
TIMES HERALD
Washington 5, D.C.

C
O
P
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1515 L Street, N.W.

Republic 7-1234

Robert H. Estabrook
Editor, Editorial Page

November 16, 1955

Dear Mr. Lehleitner:

I was indeed sorry that I did not have a chance to talk to you when you were in Washington last week. You caught me on the day when I was trying to supervise the luncheon given by the three Washington newspapers for the visiting Soviet journalists. It went off fine, but there were a good many worries connected with it, and I know you will understand my inaccessibility.

Your new approach to statehood is a most intriguing one, and it certainly has a good deal of historical merit. I agree very largely with your analysis of the prospects of statehood legislation in Congress--though I am not sure that a concerted effort to obtain Democratic pledges would not have some effect if there should be a change of administration in 1956. The fact that Hawaii and Alaska are likely to become Democratic strongholds might in some ways overcome the reluctance of Southern members of Congress to approve statehood on racial grounds.

Certainly the procedure you advocate whereby the territories would take matters into their own hands and hold statehood conventions would be dramatic. It seems to me a wholly proper procedure, and one that might stand some chance of success. It would, in any case, be a much more effective method of depicting the popular demand than the endless harangues and beseechings on Capitol Hill. The principal reservation I have is that it has been nearly 100 years since the procedure was tried. The real problem that statehood advocates are faced with is that the United States generally, and Congress in particular, has experienced hardening of the political arteries. It is hard to drum up enthusiasm for statehood when there is no fresh example within continental United States, and when the claimants who in the past might have supported such demands on at least a log-rolling basis are themselves long since satisfied. But the effort seems to me to be well worth the trouble. I assume that you would try out your idea on Bob Bartlett and Mrs. Farrington; I would add to this list President Sinclair of the University of Hawaii and Robert Atwood, the publisher of the Anchorage Times.

Your query about the impact of such action from a news standpoint is more difficult to answer. The statehood conventions themselves would have a great deal of news impact, it seems to me; but

in advance of such action the mere plan would be likely to make little dent. Sad to relate, I just don't think the majority of newspaper editors are very much interested about details of how statehood is to be achieved, even though they support the principle. Your problem is to stir interest in the territories themselves and get responsible support for your plan. Once the territories themselves undertake such action, I think you need not worry about receiving attention in the press in continental United States.*

If you plan to be back in Washington and can let me know a bit in advance, I shall be happy to discuss this with you further over a luncheon.

Sincerely yours,

(Signed) Robert H. Estabrook

Mr. George H. Lehleitner
Post Office Box 1097
New Orleans, La.

* Underscoring supplied

NEW ORLEANS ITEM

November 21, 1955

George Chaplin
Editor

C O P Y

Mr. George Lehleitner,
601 South Galvez
New Orleans, Louisiana

Dear George:

I've been thinking about our conversation and I wanted to write to tell you that my enthusiasm continues to grow.

What you have in mind is so basically American, so completely woven into the very foundation of our liberty and right of expression, that it is bound to capture the imagination of the entire nation.

It is dramatic and it is right. I think that's virtually an unbeatable combination. Looking at it journalistically, I would say that it could rank as one of the major stories of our time. I can visualize spreads in every major magazine, page one stories for many weeks and lead editorials in virtually every newspaper in the land - - not to mention the most widespread TV and radio attention.

I hope the people of Alaska show the good judgement involved in furthering this project. If so, they will be acting in the finest American tradition. What's more, their action will probably do more than any other one thing to gain them their deserved status of statehood.

All the best,

(Signed) George

George Chaplin

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OUR 49th and 50th STATES

BY
GEORGE LEWLEITNER

(Delivered to Baton Rouge, Louisiana,
Lions Club, May 1955)

Though not a mind reader I believe I can imagine that when your President announced my subject would deal with statehood for Alaska and Hawaii, some of you asked yourselves: "didn't Congress kill that proposal a few weeks ago"?

So it did . . . for the current session of Congress. But when the next Congress convenes the statehood issue will come up AGAIN; and it will continue to come up in every Congress until Hawaii and Alaska become our 49th and 50th states.

Incidentally, if I appear to concentrate my remarks on Alaska I do so because it is the lesser known of the two Territories. But substantially every inequity suffered by Alaskans is also the lot of our Hawaii-Americans . . . and for the identical reason that neither area is a state.

Principally I favor statehood for Alaska and Hawaii because of what it would do for the United States.

Alaska is more than twice as large as Texas. It is NOT a vast area of perpetual ice and snow. Much of it is fertile and adaptable to agriculture; the climate of those sections compares very favorably with some of our more northerly states. The winter temperatures of Juneau, Alaska's capital, are approximately the same as those of Washington, D.C. !

Despite the disgraceful fact that after 88 years of Federal stewardship most of Alaska yet remains to be accurately surveyed, it is known that the Territory contains important deposits of copper, iron, coal, tin, cobalt, nickel, tungsten, molybdenum, zinc, titanium, platinum, lead, antimony, fluorite, chromite, zirconium, magnetite, bismuth and mercury. You, of course, know of Alaska's gold -- of which there has already been mined an amount that has returned Uncle Sam his purchase price 100 times over, and geologists believe the Territory contains huge petroleum and uranium reserves. Yes, Alaska is, by far, our Nation's richest mineral storehouse.

In addition, Alaska's swift rivers represent hundreds of millions of undeveloped kilowatts of power. She has more timber than all 48 states combined; that which ripens annually -- and goes to waste -- in her tremendous softwood forests could be converted into paper sufficient to take care of a large part of our national needs in perpetuity!

But, ladies and gentlemen, these are largely latent resources. Little has been done to develop them for the very good reason that Alaska has been firmly held in a bureaucratic vise since acquisition, and this handicap has throttled her economic and political development. For the startling truth is that today, 88 years after annexation, the Federal government still owns 99.4% of Alaska.

It is fundamental that the development of any frontier area depends largely upon its transportation facilities. Because the Federal government has owned over 99% of Alaska; the construction of that area's transportation system, obviously, has been a Federal responsibility. Louisiana, only one-twelfth as large as Alaska, has constructed more than 15,000 miles of highways; the Federal government has built 3,500 miles in Alaska . . . and most of that is military, or wholly within a Federal reservation!

Federal development of other modes of transportation has lagged equally. There is one Federally-owned railroad, 470 miles long, to develop an area one-fifth as large as the entire United States! You can judge the manner in which this government-operated railroad performs its assignment of "developing the Territory" by the fact that its ton-mile freight rates are EIGHT TIMES the U.S. average!

Our American history reveals that, without a single exception, in each of the 35 states added to the original 13, development was retarded until AFTER those areas became states. And, if it took the stability of statehood - - and the initiative of private enterprise which flourishes ONLY in such an atmosphere - - for each of the 35 to develop its potentials, why should not the same hold true for Alaska?

Where is the logic - - or the fairness - - in asking Alaska to develop more fully PRIOR to statehood when every historical precedent plainly tells us statehood PRECEDES, rather than follows, economic and political development? A recent Scripps-Howard editorial very aptly points out that those who contend Alaska should develop more fully before the grant of statehood are taking the position of a parent who insists that her child learn to swim BEFORE going into the water!

To those who believe that Alaska's northerly location - - rather than its inadequate form of government - - has been the prime barrier to her growth, I'd like to suggest that Denmark, Norway, Sweden and Finland share Alaska's latitudes, topography and climate; yet they, in a smaller area - - and, I believe, with less natural resources - - support a healthy, prosperous population of 19 millions of people!

Our Nation urgently needs a robust Alaska and the full development of Alaska's rich resources. She can - - and will - - become one of our great states if we will only cast off her bureaucratic

shackles and give her the statehood her people need, want, and deserve!

But there seems to me to be a yet more compelling reason for statehood: These Territories are America's showcase of democracy, and as such, are on view to the entire world.

And what do we display to the world in our Alaskan and Hawaiian showcases? An intelligent, well-educated, and devoutly loyal citizenry, who have fought with valor and distinction in four American wars. Many are your and my former neighbors. This is particularly true in Alaska where more than three-fourths of the people are former residents of the 48 states, who, following the examples of their American pioneer ancestors, moved to our Nation's last frontier to carve homes, businesses and professions from the wilderness.

I would not leave you with the impression that Alaska is all wilderness. For despite the hardships they've had to contend with because of the inadequacies of Territorial government, these hardy Americans have transplanted their skills and cultures to that area. You would feel very much at home there. Alaskans have excellent schools, churches and towns; over 80,000 people live in Anchorage, Alaska's largest city, and you would find it to be as modern as your own splendid city.

Alaska pays its teachers higher salaries than do ANY of the 48 states; and the average Alaskan has had more years of schooling than his cousin back home. Alaskan women were privileged to vote six years before our 48 states ratified the Nineteenth Amendment to the Constitution. Alaska was also the first American community to establish the 8 hour day. In short, Alaskans have shown themselves to be good citizens.

But good citizenship is a two-way contract. A nation has a right to expect that its people will be good citizens . . . and they, in turn, are entitled to expect equality of treatment from the nation. Especially when a crystal-clear promise to that effect has been made. I should like to read Article III of the Treaty of Cession between the U. S. and Russia, by which Alaska was acquired in 1867. I quote:

"The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years, but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion." (Art. III of Treaty of Cession between United States and Russia; ratified by the U. S., May 28, 1867.)

How have we kept that solemn treaty obligation to admit Alaskan-Americans "to the enjoyment of ALL the RIGHTS, ADVANTAGES and IMMUNITIES of citizens of the United States"?

The greater part of 100 years have passed since that pledge was given . . . and no Alaskan has yet voted for a President of the United States?

Nor for their own Governor. Or Judiciary. For Alaskan and Hawaiian governors and judges are not selected by the people they are to govern and judge: instead they are political appointees of the Party in power in Washington.

Hawaiians and Alaskans are permitted to select their own Territorial Legislatures, but even this turns out to be a hollow privilege . . . for every act of these legislatures is subject to TWO vetoes: one, by its Washington-appointed governor, and the second (and this one is absolute!) by the U. S. Congress:

Perhaps the most vital RIGHT denied them is one we are sometimes inclined to take for granted: the protection we receive from our Senators and Representatives. Alaskans and Hawaiians have no vote in Congress . . . for only states may send Representatives and Senators to Washington.

What, do you suppose, would happen were some northern Congressman to propose that all oil produced in Louisiana be shipped in crude form to northern refineries for refining and processing? The question, I know, is academic . . . for if any such law had ever been proposed our Louisiana Congressmen would STILL be talking against it. Were such a discriminatory law passed it would be short-lived, for the Supreme Court would have no choice but to declare it unconstitutional under that clause of the Constitution which prohibits discrimination against any State.

It happens that sugar is as important to Hawaii as petroleum is to Louisiana. It - - and not tourists - - is Hawaii's biggest industry.

In 1934 Congress passed the Jones-Costigan Act which made it mandatory that all sugar grown in Hawaii must be shipped in raw form to some mainland refinery for refining and processing as finished sugar!

Alaska has been the victim of a similar viciously discriminatory law passed by Congress in 1920. Sponsored by a Senator from Washington State, it gave the port of Seattle - - and Seattle railroad and steamship interests - - a monopoly on freight moving to and from Alaska. In the intervening 35 years Alaskans have had to pay exorbitant freight rates that have been as much as four times higher than those applying to similar movements between the states. I might also add that this unjust law is still on the statute books, and will probably remain until statehood expunges it.

Naturally, these cases were taken to the U. S. Supreme Court. That body frankly recognized that discrimination existed which would have nullified these laws had they applied to Americans residing in a state; but these were not illegal because the discrimination was against Americans living in a Territory!

In other words, the only relief open to these Americans is: Statehood!

In the early years of this century, when Alaska's huge coal deposits were found, Pennsylvanians and West Virginians in Washington made the alarming discovery that their states' coal reserves would be depleted (in about 6,000 years) and so the Federal government promptly designated the Alaskan area containing the newly discovered coal deposits a "Federal Forest Reserve" - - and that very effectively put the padlock on Alaska's coal . . . and, incidently, eliminated it as a potential competitor of Pennsylvania and West Virginia mines!

Ladies and Gentlemen, "colonialism" is still "colonialism", no matter by what name it is called - - and these practices are "colonialism" in its crudest form. To my eyes - - and, I'm sure, to yours as well - - the ugly cape of colonialism doesn't look good on my Uncle Sam!

I only wish I could, somehow, indelibly implant in your minds the fact that these injustices and indignities are being imposed upon fellow Americans. Fellow Americans, I might add, who are required to pay Uncle Sam every Federal tax you and I pay as Louisianians!

Let us be honest with ourselves: in the face of such examples of raw "colonialism", are we privileged to point an accusing finger at Soviet Russia, or at Communist China, because they make a mockery of the democratic process by permitting but ONE name on each ballot?

Our country came into being 179 years ago because the degradation of "colonialism" was repugnant to our Founding Fathers. They believed that "Taxation Without Representation" was tyranny . . . and that "Government Without the Consent of the Governed" was an evil thing.

Are these injustices lesser evils in 1955? Rather am I inclined to feel that you share my belief that they are greater evils, today, when the practice of "colonialism" is despised throughout the world. And, may I add, a world in which, even now, a titanic struggle is being waged for the minds of men.

Thus far we appear to be trying to buy the loyalties of the so-called "uncommitted peoples" with dollars. It is a matter of record

that since the end of World War II we've given away about sixty billions of dollars in various "foreign aid" programs.

I submit, my fellow-Lions, that insofar as the peoples of India, Indonesia, Burma, Korea, and many another former colony are concerned, the act of granting the equality of statehood to Alaska and Hawaii would carry more weight than all of the billions we've already spent -- or intend to spend. For until this is done we stand equally guilty, with the "Colonial Powers", of practicing "colonialism" upon a subject people. If anything, our offense is the greater, as we, while professing to be against it, have imposed it upon a group of our own fellow-citizens!

There is yet a final injustice I am sure you would have me bring to your attention: the young men of Alaska and Hawaii are drafted by Uncle Sam even as you and your sons are. Almost 30,000 young men from Alaska and Hawaii were conscripted in the first World War; over 60,000 served in World War II, and 30,000 more were drafted -- and wore American uniforms with honor and distinction -- in the Korean War.

Please do not misunderstand me: Alaskans and Hawaiians are PROUD to serve this, their Country, whenever it needs them. But they, too, are entitled to the dignity and the comfort that comes from knowing that they are risking their lives to preserve the "democratic way of life" for themselves, and their families.... as well as for others! That ominous telegram which begins: "The Secretary of Defense deeply regrets the necessity of informing you..." brings as much pain to the hearts of Alaskan and Hawaiian mothers, fathers and wives as it does to Louisianians.

Yes, when the world looks into our Alaskan and Hawaiian "showcases" it finds incontrovertible evidence of an American which -- as far as her citizens in those Territories are concerned -- has turned her back upon the principles upon which she was founded. They are, indeed, shabby showcases for American democracy!

Invariably, then, the question arises: "Why hasn't Congress granted statehood"? My answer can be brief: selfish, partisan politics! While I do not personally subscribe to this arbitrary conclusion, it is unfortunately true that many men in Congress feel that Alaska would send Democrats to Washington, and Hawaii would elect Republicans.

Consequently, each Party has striven to bring in the Territory it believed would add to its own numerical strength, and because Congress, for years, has been almost evenly divided it has been impossible for one Party to enforce its will upon the other.

And when the two bills are tied together -- as has been the case in the two past Congresses -- the leaderships of BOTH Parties lose their enthusiasm for statehood and the joined measure attracts the combined opposition!

Typical of that opposition is the position taken by some Texans: they are frank to admit they will always oppose Alaska because it would become the largest state!

And, as a Southerner, I am ashamed to say that many Southern Congressmen oppose both because they fear that Alaskan and Hawaiian Congressmen will not vote as they (the opposed) would want them to vote. This is, to my mind, the most disgraceful of all reasons for opposing statehood. May I add, also, that until Alaska's and Hawaii's Congressmen are chosen how can anyone short of God presume to know how those men will vote on any given issue?

I am immensely proud, as a Louisianian, to tell you that several Louisiana Congressmen have consistently favored statehood. Senator Long, in particular, has been outstanding in his support and has thereby added considerably to his stature as a statesman of vision who places the best interests of his Nation and its people above petty considerations of partisan politics.

When will Alaska and Hawaii become States? This will occur when enough Americans take sufficient interest in this disgraceful situation to write their Congressional representatives and insist upon its correction. Only Congress has the power to admit new states...and Congress, apparently, will not act until YOU, the people back home, express your wishes clearly and distinctly. Certainly your fellow-citizens in Alaska and Hawaii are powerless to influence Congress; they have no vote!

No...the responsibility rests squarely upon you...and me...and upon our fellow-Americans in the 48 states.

May I suggest, then, that you -- this very day -- write Congressman Morrison and Senator Ellender your views on this vital matter? And while you're writing, drop Senator Long a note to let him know you appreciate the statesmanlike stand he has taken. It is both our privilege and our duty, as good citizens, to let our Congressional representatives know our feelings on such vital issues.

If you will do these things -- and will help spread the Hawaiian and Alaskan story among your friends -- you'll have the deep satisfaction that comes from knowing that you did your part to help correct a long-standing injustice.

Moreover, you will know that you helped make your Country bigger and stronger...both physically and morally.

Perhaps most important of all, at this critical period in history, you will have helped our beloved Nation stand before the world erect and with clean hands, and proudly show that it truly "practices what it preaches" when it advocates government "OF the people, BY the people, and FOR the people"...for all men... everywhere.

I am most grateful for the privilege of appearing before you, and for your very gracious attention.

(Delivered to Baton Rouge, Louisiana, Lions Clubs, May, 1955.)

Transitional Measures - Research Material

Geo. A. Seilighner

THE "TENNESSEE PLAN"
-- Admission of the Bold --

*Statehood
Committee*

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A*

ALASKA LEGISLATIVE COUNCIL

Alaska Materials file

This is the story of what has always seemed to me to be some of the most fascinating (and exciting!) chapters of our country's history: the record of how an earlier generation of American pioneers secured their birthrights of first-class American citizenship, through the attainment of statehood, in the face of major obstacles which -- as with Alaska -- included repeated Congressional refusals to pass enabling legislation.

Tennessee. -- Because this approach to statehood was first conceived and executed by the Territory of Tennessee, I shall take the liberty of referring to it as "The Tennessee Plan". The life-giving clause which the members of the Tennessee Convention wrote into their Constitution was simply the proviso that all state officials called for by that document were to be elected immediately following ratification. Because the Federal Constitution at that time provided for the choosing of U. S. Senators by the various state legislatures, Tennessee's Senators were selected by the Tennessee General Assembly which convened initially for that purpose March 28, 1796, or about one month following the election of that body's membership.

Shortly after their designation as such, Senators-elect William Cocke and William Blount departed for Washington with their credentials. Although the Senate, understandably, refused to seat them prior to Tennessee's formal admission, they must, indeed, have done an admirable job of lobbying their "State's" case as Congress, which previously had refused to consider an enabling act for this Territory, completed passage of an admission bill on May 31, 1796! President Washington signed the bill the following day, and Tennessee became our 16th State... less than four months following the spirited action of these pioneer Americans in THEMSELVES setting into motion the events that brought them statehood!

It is interesting to note that even prior to the election of their State and Federal officers the Tennesseans wished to make it clear that they were through with "the hat-in-hand approach" to statehood. Believing that, as American citizens, they were entitled to the sovereignty of statehood -- and without undue delay -- Territorial Governor William Blount (who also had served as Chairman of the Constitutional Convention) wrote the U. S. Secretary of State February 9, 1796, three days after the final draft of Tennessee's Constitution had been completed:

"As Governor, it is my duty, and as President of the Convention I am instructed, by a resolution of that body, to forward you a copy of the Constitution formed for the permanent government of the State of Tennessee, which you will herewith receive by the hands of Major Joseph McMinn...."

"The sixth section of the first article will inform you that the first General Assembly to be held under this Constitution is to commence on the last Monday in March next. The object of the Convention, in determining on this early day, is a representation in the Congress of the United States before the termination of the present session...." ¹

Michigan. -- Thirty-nine years after Tennessee's success, the Legislative Council of the Michigan Territorial Legislature decided that this was the logical avenue for 85,816 Michiganders to take to achieve statehood, as Congress had failed to pass an enabling act for it despite the fact that the Northwest Ordinance of 1787 had indicated that statehood would follow when a population of 60,000 had been achieved.

A call was issued for the election of delegates to a Constitutional Convention and that body convened May 11, 1835. The document that resulted was ratified by the people in October, by a vote of 6,299 to 1,395. At the same election, a complete slate of State officers was chosen, as well as Isaac E. Crary, to serve as Michigan's first Representative in Congress.

Next, the State Legislature convened November 2, 1835, as ordained by the Constitution and selected two U. S. Senators. The Senators, Lucius Lyon and John Norvell, together

with Representative-elect Crary, proceeded to Washington, where they presented their credentials. . . . and began lobbying for the passage of an admission act.

Michigan's admission was delayed longer than was that of Tennessee, partly because the State of Ohio protested her entry into the Union on the grounds that Michigan's Constitution laid claim to the Toledo area, which Ohio considered to be her territory. After some delay, Michigan consented to the deletion of this area from its boundaries, and in January, 1837, Congress passed, and the President signed, a bill admitting Michigan as the 26th State.

Thus, again -- and within sixteen months of the date the American citizens of Michigan had vigorously exercised their fundamental right of self-determination by approving a State Constitution, and had selected the officials called for by that document -- there was demonstrated the power of the people, when their object was just, and they approached it with sufficient determination.

Oregon. -- Twenty years later, in 1857, men of leadership and vision in the Territory of Oregon, impatient over Congress' failure to pass enabling acts which it had considered at two prior sessions, decided to use the "Tennessee Plan". Accordingly, following a favorable plebescite on the subject, delegates were elected to a Constitutional Convention which sat in August and September, 1857.

The resultant Constitution contained a provision (Sec. 6) that, after ratification, there would follow, in June, 1858, a special election for State, County, and Federal officers. Further, it provided for the assembly of the State Legislature, one month thereafter, in order that that body might choose two U. S. Senators.

This Constitution was ratified by a vote of 7,195 to 3,215 on November 9, 1857, and the elections previously referred to were duly held. Lafayette Grover was elected to serve as Representative, and the legislature chose Delazon Smith and Joseph Lane as U. S. Senators. Grover and Smith left immediately for Washington; Lane was already there in the capacity of Oregon's Territorial Delegate to Congress.

Collectively, the three labored hard and well for their cause. Carey, in his excellent work on the Oregon Constitution, states that "they diligently sought out and interviewed the members of both Houses, and were eager to get their seats and to begin drawing their pay".² Delazon Smith, in November, 1858, writing a friend back in Oregon, revealed his own activities on behalf of statehood:

"You may bet high on the admission of Oregon early in the session. I have seen every member now in the city, and you better believe I have 'labored' with them! Everybody is for us!"³

Alaskans who are nettled by the opposition to statehood expressed by some Alaskan newspapers can, perhaps, derive some comfort from the fact that Oregon also had to carry a similar cross. Senator-elect Smith wrote on this score:

"I must say, in all candor, that I derive but very little satisfaction from the perusal of our Oregon papers. It requires more labor here in Washington to counteract the influence of the Oregon press than it does to meet and vanquish all its other enemies!"⁴

Though the margin of victory (the Senate passed the bill 35 to 17, the House 114 to 103) was not as broad as Smith's previously expressed optimism, the important point is that an admission bill did pass, and was signed by President Buchanan on February 14, 1859, only eight months after the people of Oregon, under aggressive and competent leadership, elected their State and Federal officers, and in all other salient respects followed the unique path to statehood blazed by Tennessee and Michigan.

2. Charles Henry Carey, The Oregon Constitution (Salem, Oregon, 1926), 46.

3. Ibid., 47.

4. Ibid., 47.

California. -- But, unquestionably, the most spectacular result obtained from use of the "Tennessee Plan" was the achievement of statehood by California in 1850.

You will recall that title to California was obtained from Mexico by the treaty of peace that followed the Mexican War. Congress, however, "never got around" to organizing it as a Territory; the general belief seemed to be that that area was much too remote, and too lacking in potential, to justify an organic act which, by historic precedent, would give California the status of an apprentice-state. Instead, Congress was content to let this area remain an unorganized Military District, with Brig. Gen. Bennet Riley, the military commander, doubling as its civil governor.

Then, in 1848, with the discovery of gold, there suddenly began to flow into California a deluge of new settlers. But these were not the farmers, homesteaders, and restless frontiersmen who had populated the other western lands. These were gold-seekers, and they came in vast numbers from the populous cities of the East and South. Shop-keepers....lawyers....artisans....doctors....'the butcher, the baker, and the candle-stick maker'....all poured into California in search of quick fortunes.

Some were irresponsible and lawless, and with their coming there developed problems in law-enforcement and government which soon over-taxed the shoddy, inadequate military government provided by Washington.

Others were conscientious men of good will. And, most had this in common: Coming from the older American states they had known the benefits of stable, constitutional government, under statehood, and they were determined that no inferior form would be acceptable. It is both interesting -- and inspiring -- to note the enthusiasm and the dispatch with which they acted.

In June, 1849, Gen. Riley was prevailed upon to issue a call for a Constitutional Convention. This he did (without prior Congressional authorization) and the delegates thereto were elected August 1, 1849.

The Convention convened at Monterey one month later, and sat until October 13, 1849. The document it produced provided for the establishment of a state government, and specified that a ratification election would be held thirty days after adjournment, at which time all the elective state offices would be filled, as well as those of the two Representatives to Congress.

On November 13, the people enthusiastically approved this Constitution by a vote of 12,061 to 811. The first State Legislature convened thirty days later and selected John C. Fremont and William M. Gwin as California's first Senators. Within a few days of their selection they, and the two Representatives-elect, Edward Gilbert and George W. Wright, left by stagecoach for Washington, to urge immediate admission.

Their arrival created quite a stir at the Capitol -- as may well be imagined -- for it will be remembered that Congress had not been willing to grant even Territorial status to this area, and now these brash Westerners had come demanding statehood!

Bancroft, in his History of California, reported that "their presence in Washington was regarded by some of both sections, but especially by the South, as unwarranted, even impertinent".⁵

Pro-slavery Southerners were enraged because California proposed to be admitted as a "free" state. William R. Tansill, Library of Congress analyst, states: "The South was so strong in its denunciation of the proposed admission that talk of secession was heard in more than one Southern State."⁶

The Congressional debate which California's bold action precipitated lasted eight months. During its course Californians were bitterly assailed as "a group of ill-mannered adventurers and ruffians who had not bothered to wait for an enabling act".⁷

5. Hubert Howe Bancroft, History of California (San Francisco, 1888), VI, 342.

6. William R. Tansill, Election of Congressional Delegations Prior to the According of Statehood (Library of Congress, 1955), 14.

7. Ibid., 14.

But, whereas Congressional sentiment initially appeared to be against her, the weight of Justice, (and the persuasiveness of her four stellar "lobbyists"), ultimately tipped the scales in her favor, and on September 9, 1850, California was admitted... eleven months after its Constitutional Convention had completed its labors on the document which set into motion the chain of events that led to statehood.

It seems peculiarly appropriate that the documentary section of this presentation should be concluded with an historian's forceful comment on the memorial California's Congressional delegation-elect presented to the Congress:

"A state government, and such a system of measures as a state legislature, alone, could enact was imperatively necessary. The neglect of Congress had forced California to form such a government.

"They (Californians) did not present themselves as supplicants, nor with arrogance or presumption. They came as free American citizens -- citizens by treaty, by adoption, and by birth -- and asked only for a common share in the common benefits and common ills, and for an opportunity to promote the general welfare as one of the United States." ⁸

Conclusion. -- The deeper this researcher has probed into the subject during the past eight years, the stronger his convictions have become that the "Tennessee Plan" offers Alaskans their most logical avenue to statehood.

Not merely because of historic precedent -- though it is certainly true that the plan has, heretofore, been followed by statehood in all seven instances ⁹ in which it was used. While this unbroken chain of successes is, in itself, quite encouraging, it is felt that there are other, and even more positive, advantages which may reasonably be expected to follow such an action. Among them are these:

1. Such an action by Alaskans would almost surely "capture the headlines"... and if the story of Alaska and its entitlement to statehood is to be gotten across to stateside Americans, it will have to be by use of page one, for, as every editor knows, Mr. and Mrs. Average American do not read even the best written editorial page.
2. The dramatic values of such an action would also, I believe, cause Alaska's Senators and Congressman-elect to be much sought-after for appearances on national TV and radio programs, and for articles in broadly read magazines. Here would be further opportunities to tell Alaska's story, and to enlist that measure of militant public support which, to date, has been sadly lacking.
3. This story, if told broadly and effectively, will make it clear not only to Americans, but to other peoples as well, that Uncle Sam, the leader of the Free World, would, himself, be guilty of "colonialism" were Congress to continue territorialism in Alaska and Hawaii. For in the final analysis "territorialism", as practiced in Alaska and Hawaii, is simply the American version of "colonialism". It is my deep conviction that the untenability of this position, once the floodlights of full publicity were turned upon it, would, itself, virtually guarantee that Alaska's statesmen would not be sent home empty-handed.
4. Perhaps the most positive single benefit which could reasonably be expected to stem from this action would be this: It would give Alaska three "Super-Lobbyists" to plead her just cause.

8. Zoeth Skinner Eldredge, History of California (New York, 1915), 278-374.

9. In addition to Tennessee, Michigan, California and Oregon, the Territories of Iowa, Minnesota and Kansas took similar action. Though they, too, were successful, their case histories have not been detailed here because of some unusual circumstance that attended their admissions. Kansas, for example, was admitted in 1861 after the Southern States had seceded.

Can anyone question the salutary effect of calls upon Senators and Representatives by these, the elected representatives of the people of Alaska, who, if seated, would thereafter cast Alaska's VOTES on measures that come before the Congress? Including, I might add, numerous bills in which the gentlemen called upon would have a very deep interest!

While realism prompts the feeling that many Southern opponents will remain such to the end, it seems equally realistic to expect that such face-to-face conversations will surely help to allay some of the present concern of this group.

Moreover, irrespective of what one may think of the brand of arch-conservatism espoused by these men, it must be conceded that they are, indeed, astute practical politicians.

5. Finally, but surely not least in importance, would be the invigorating effect of a dynamic deed of this kind upon the people of Alaska.

Is it not reasonable to presume that this essentially American action could well provide the spark which would ignite latent public enthusiasm for statehood? That, at least, was the experience of the other statehood-seeking areas discussed. . . . and I do not believe Alaskans would react differently. That is, if they really WANT statehood to the degree it was desired by those earlier Americans.

I am not blind to the possibility of failure. . . . even though the "Tennessee Plan" has succeeded each time it has been used. Each of those successes could have been a failure, had the leadership of those areas been less astute, or were they lacking in vision, boldness, or enthusiasm. However, even had they failed there can hardly be any question but that their dynamic action would have brought their areas closer to ultimate statehood. In this respect the "Tennessee Plan" appears to be the sort of endeavor wherein Alaskans would have everything to gain. . . . and nothing to lose!

But, subject only to the proviso that it be properly executed, it is difficult to believe that the plan would fail. Alaska's chances of success with it should be greater than were those of California or Oregon. For you, today, would have the tremendous advantage of modern communication for the task of molding public opinion.

Principally, however, the "Tennessee Plan" would provide a vehicle for an aggressive attack. No people in history ever accomplished anything worth-while without making a commensurate effort. No nation has ever won a war by remaining on the defensive. Deeds win wars. . . . and achieve ideals!

That there would be protests against this action, both from within and without, is a foregone conclusion. Some will perceive to see in it the seeds of anarchy; others will base their objections upon its "irregularity".

You have already seen that it is NOT irregular. Nor is it illegal. For the very first Article of our Bill of Rights, you will recall, guarantees that "Congress shall make no law. . . . prohibiting the right of the people peaceably to assemble, and to petition the Government for a redress of grievances".

In its very essence the "Tennessee Plan" is a forthright and logical form in which to petition the Government for the redress of a monstrous grievance. Because the grievance is real and stubborn the petition for its correction must be vigorous and dramatic. For these reasons the "Tennessee Plan" has ALWAYS succeeded in the past.

I firmly believe that it can succeed again -- for Alaska.