

ALASKA CONSTITUTIONAL CONVENTION

January 14, 1956

FIFTY-THIRD DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning the Reverend Charles Powers of the Church of the Nazarene in Totem Park. Reverend Powers will give the daily invocation.

REVEREND POWERS. Gracious Heavenly Father, we thank Thee for this another day. We pray that Thou wilt bless us as we convene at this time and undergo the governmental affairs of our Territory. We pray Thou wilt bless each delegate, Thou wilt encourage them and help them. Bless their families back home. May the spirit of God bless them at this time. We ask these things in the name of Jesus Christ. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll at this time.)

CHIEF CLERK: One absent.

PRESIDENT EGAN: The Convention will come to order. A quorum is present and the Convention will proceed with its regular order of business. Does the special Committee to read the journal have a report to make at this time? Mr. White?

WHITE: May we hold it in abeyance?

PRESIDENT EGAN: The report will be held in abeyance. Are there any petitions, memorials or communications from outside the Convention? Are there reports of standing committees? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to announce a meeting of Style and Drafting for the 10:30 recess at the rear of the gallery.

PRESIDENT EGAN: The Committee on Style and Drafting will meet in the rear of the gallery at the 10:30 recess. Are there reports of select committees? Are there any motions or resolutions? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to move at this time that it be the policy of the Convention to adjourn today at 5:40 p.m., to have no night session today, and when we adjourn to adjourn until 9 o'clock Monday morning.

GRAY: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that it will be the policy of the Convention today to adjourn at 5:40 p.m. to have no night session and to adjourn until 9:00 a.m. Monday morning.

RILEY: Mr. President, I would like to ask the mover of the motion if he would consent to an amendment for the next earlier bus to enable many people to accomplish quite a few chores that have been accumulating.

SUNDBORG: Do you know when the next earlier bus is?

GRAY: I have that information, when I see which set of figures I will use here. It leaves the University at 4:05.

SUNDBORG: May I have consent, Mr. President, to amend my motion that it will be the policy to adjourn at 3:45 p.m.

PRESIDENT EGAN: If there is no objection, the motion is amended to read that the policy will be that the Convention will adjourn at 3:45 p.m. this afternoon. Is it your reasoning, Mr. Sundborg, that Style and Drafting and Local Government, particularly, might have an opportunity of meeting over the weekend?

SUNDBORG: I can't speak for Local Government, Mr. President, but Style and Drafting definitely need a lot of time over the weekend and we will make use of those hours.

SMITH: I might say that the Resources Committee certainly will make use of that time.

PRESIDENT EGAN: The Resources Committee will also be able to make good use of that time. Is there objection to that motion? Mrs. Hermann.

HERMANN: I have no objection, but I think while we are on the matter of policy, if we are going to continue these night meetings, and it is very apparent we are going to have to, that we have a break in the middle of the week. I would like to see us not hold a night meeting say on Thursday, that night the stores are open and there is an opportunity for anybody who wants to take care of their personal business, but I think the long drag from Monday until Saturday might well be broken in the middle of the week instead of necessarily on Saturday in the future.

PRESIDENT EGAN: That matter might be brought up on Monday, Mrs. Hermann. Is there objection to this motion before us that this be the policy today that the Convention adjourn at 3:45? Mr. Marston.

MARSTON: Mr. President, it depends entirely on what we do today with this problem on our hands. If we go along and accomplish something, I think the plan is delightful, but if we don't do it and accomplish something, I propose we stay here all day Sunday.

PRESIDENT EGAN: Is it your idea, Mr. Marston, that we hold this motion in abeyance until later in the day?

MARSTON: I would be willing to, to see how they behave here on this floor.

SUNDBORG: It is only a declaration of policy and a motion to adjourn always is in order. We could keep meeting as long as there is no motion to adjourn, which would carry.

HERMANN: I don't think it is a matter one can vote on. It is just a declaration of policy.

PRESIDENT EGAN: That is right. It is just a declaration of policy. If there is no objection, that will be accepted as the declaration of policy. Mr. Metcalf.

METCALF: As I understand it, when we adjourn this afternoon it will have to be on a motion this afternoon?

PRESIDENT EGAN: That is right.

METCALF: If we don't accomplish anything today, some of us who want to stay here can ask to continue to stay?

PRESIDENT EGAN: The delegates would have to in any event, Mr. Metcalf, vote with the majority vote for the adjournment. We have before us Committee Proposal No. 10a. Mr. Barr had an amendment pending at the time we adjourned last night.

BARR: That has been moved and seconded, Mr. President. I don't propose to take up much time.

PRESIDENT EGAN: Would you state the amendment, Mr. Barr?

BARR: On page 5, starting on line 15 --

PRESIDENT EGAN: Would the Chief Clerk please read it?

CHIEF CLERK: "After the word 'prepare' on line 17, insert 'and submit to the governor-elect'."

BARR: The only change that it makes is that it directs to whom this report is made; in other words, it does not necessarily have to go to the legislature publicly or to the newspapers. My

only thought there was, as I stated before, was to prevent this report from being used for any ulterior motives or from belittling anyone. It is highly useful to the governor-elect to have such a report, so he will have the governor's opinion on what has been done, what should be done, the financial condition of the Territory, etc.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I would just like to inquire of the mover, do you think that your purpose is being accomplished by this language? I understand and I have no objection to the purpose of the amendment, but do you believe that this language would keep the report from getting into the hands of anybody?

BARR: It would not keep it from getting in the hands of a determined person, any reporters, etc. I thought it might be useful in case the governor did want to give it to a member of the Legislative Council to work on. It would not necessarily be secret but on the other hand it wouldn't be publicized, particularly.

JOHNSON: Do you think adding the word "only" after the word "elect" might tend to narrow it down a little?

BARR: That might be all right, then the governor could give it to some certain person if he wanted to. I would have no objection.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: May I address a question to Mr. Barr?

PRESIDENT EGAN: If there is no objection, Mr. Nerland.

NERLAND: Mr. Barr, in the event the governor is re-elected, to whom would you intend that he would submit this report?

BARR: No one. He has no successor.

NERLAND: Would you intend then that he submit it to the legislature, possibly?

BARR: No, that was not my idea.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, I would like to follow in with this in line of the Committee thinking, when we thought of this report,

as I recall, it was to be given to the governor-elect, that was our intention. However, at the same time I think it was to be a report that might be of interest to history at the end of each term whether the governor succeeded himself or not. Whether it should be public or not, I don't think that should be the main issue.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Barr be adopted by the Convention?" All in favor will signify by saying "aye", all opposed "no". The Chief Clerk will call the roll.

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

Yeas: 27 - Barr, Collins, Cross, Emberg, H. Fischer, Harris, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Laws, Londborg, McCutcheon, Nerland, Nolan, Peratrovich, Poulsen, V. Rivers, Robertson, Smith, Taylor, VanderLeest, Walsh, Wien, Mr. President.

Nays: 26 - Armstrong, Awes, Boswell, Buckalew, Coghill, Cooper, Davis, V. Fischer, Gray, Hellenthal, Hermann, Hilscher, Lee, McLaughlin, McNealy, Marston, Metcalf, Nordale, Reader, Riley, R. Rivers, Rosswog, Stewart, Sundborg, Sweeney, White.

Absent: 2 - Doogan, McNees.)

HURLEY: I would like to change my vote from "no" to "yes".

PRESIDENT EGAN: Mr. Hurley changes his vote from "no" to "yes".

CHIEF CLERK: 27 yeas, 26 nays, and 2 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Mrs. Sweeney.

SWEENEY: Mr. President, I would like to move reconsideration of my vote on Section 6 which was to strike the section.

PRESIDENT EGAN: Mrs. Sweeney moves reconsideration of her vote on Section 6.

DOOGAN: I second the motion.

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Mr. President, yesterday I voted to strike this section because I was not too happy with it, and then after it was struck

it appeared that, at least the feeling was drawn out that the whole proposal had almost been wrecked. I believe that section can be changed so it will be acceptable and for that reason I would like to have the reconsideration at this time with possible amendment afterwards if the section is retained.

PRESIDENT EGAN: Is there further discussion? Section 6 is now before us once more. Mr. Boswell.

BOSWELL: I would like to trace the evolution of this particular article through the Committee. Our first decision was, should we have a lieutenant governor? We decided that was a luxury which we could not afford in this new state. So our second decision was to try to set up a working successor to the governor, and it seemed a logical choice would be the secretary of state. Our third decision was regarding the election, whether this secretary of state should be elected or appointed, and we felt it would be a little more democratic, more acceptable to the public, give them more to say, if he were elected. Then the question was, how can we elect a secretary of state and be certain he would be compatible with the governor and be of the same party as the governor. I asked Mr. Cooper this question on his previous amendment, how he could expect this elected secretary of state to be of the same party and he could not answer. I realized I was tossing him a curve at the time because we could not answer it; so that was why we came up with this particular section and we decided then that we could accomplish the purpose we were after by nominating the secretary of state and the governor separately and pairing them to run in the final election so that we would at least be certain that they would be of the same political party, and I think that is the important thing on it. It would be obvious to all that if we had a governor of one party and a secretary of state of another party that they could not only not work together, but there would be terrific confusion if that secretary of state ever succeeded to the governor. I think when the people of Alaska have this opportunity to nominate a secretary of state and realize the important position that he holds, they are going to be very careful of the man they nominate, and I don't think he will be the type of man that Mr. Buckalew would have us think he would be. Now if you think the Committee approach has been illogical or if you want to "buy a pig in a poke", support Mr. Buckalew's amendment. If not, I think the committee proposal has merit.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: I seconded Mr. Buckalew's motion and I have always felt that Section 6, as worded for the reasons that we stated yesterday, injects an undesirable element in our constitutional government, and as far as a "pig in a poke", and I want to direct my remarks solely to that. There is an amendment on the desk

which reads as follows: "That Section 6 be stricken and the following substituted: 'There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. He shall perform such duties as may be delegated to him by the governor. He shall perform such administrative functions as are prescribed by law'." The amendment goes on and deletes the words "person elected" in line 12 of Section 7, and that is all there is to it. Now that amendment prescribes a constitutional secretary of state. The reason for that is so that the order of succession is preserved. It makes him an appointee of the governor, so the objection as to political faith is immediately removed. He will be of the same political party. It makes him a working secretary of state, because as far as executive duties are concerned the governor may delegate some to him. Administrative duties which of course do not infringe upon the executive may be prescribed by law. That avoids any conflict between a secretary of state working contrary to his governor, so this amendment preserves the order of succession exactly as it was in the original proposal, except only that the secretary of state is an appointive official, but the order of succession is preserved. Everything of the original proposal is preserved, and it is not "a pig in a poke". There are other equally, I think, desirable alternatives. There is no magic about this thing. It is very simple. In answer to Mr. Marston's statement, I am quite sure by 12 noon we will be all through with this thing. We could adopt many healthy proposals in that time, too, all of them better than the present Section 6. I have talked to other people who have equally sound alternative methods, none of which require huddles or delay, very simple, very clear and generally unobjectionable, so I say that if we do reconsider this matter, there are sound alternates and I do think though, that the present section or the section that was submitted to us must be improved.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it appears to me that the only difference between Mr. Hellenthal's proposal as he has talked about it here, and the committee proposal is the point as to whether the secretary of state is going to be elected or whether he is going to be appointed. I am afraid we are going to get ourselves in a box here if we vote on the motion to reconsider. I am afraid we may be foreclosing the possibility of considering Mr. Hellenthal's amendment. I am wondering if it might not be more orderly to hold the matter of the reconsideration until after we have heard Mr. Hellenthal's amendment. I am afraid we will be in the same position we were in yesterday where we struck certain language and then we had to have an amendment to put the same language back in. As it now stands, we have stricken Section 6. If we take the motion to reconsider and if that

motion to reconsider is against Mr. Buckalew's amendment, we will be in the position then of having failed to strike the section and then we have another motion come along to strike the section over again. It seems to me that the primary question at the minute is whether the body does or does not want an elective secretary of state.

PRESIDENT EGAN: Mr. Londborg.

LONGBORG: Mr. President, I would like to speak another word for the committee proposal as we drew it up. As I see the difference in the remarks now of Mr. Hellenthal and his would-be secretary of state, and the one that the Committee provided for, is this, of a time element as far as when the governor picks his partner. In other words, has the Committee made it possible that the governor would have a perfectly compatible working partner; he would choose that man or the party would work together and pick that man before the election, or if the law so provided, he may be picked in the primary to be the running partner of the successful nominee of the primary for governor. Now, as I see it, the pressure that is going to come upon the governor in selecting a secretary of state will be just the same as the pressure if he were to pick him before he was elected as governor. This man that will be selected as secretary of state after the governor is elected, will be a man who can take over the governor's office for a period of three or three and one-half years, maybe even more should the governor die. You can be sure there is going to be just as much pressure on the governor to attach on to him somebody the people don't want but somebody to whom the party owes a debt; but if you have the secretary of state as just a working man and not succeeding to the governor's chair, that would be a different thing, but if he is to fall in line for the governorship, then we stand the chance of having a person become governor for a period of one, two, three, three and one-half, and a day short of four years. The people would as a whole perhaps reject just because of some pressures put upon the governor to put that man in as his secretary of state. I think the fair way to the people would be to have that man along with the governor on the general election ticket. Then if we don't feel that the governor chose wisely or the party chose wisely, they can both be rejected. The people have a choice. I can see that the strong executive would be one that would just pick all of his own men and those he doesn't want, he just throws away, but I think there are going to be pressures upon him in the selections, and that is one pressure that can be revealed before we take the whole "poke". We are going to know what we are getting and they can be accepted or rejected as a team.

PRESIDENT EGAN: Mr. Riley.

RILEY: In the line of Mr. Davis's suggestion and as a point of inquiry, Mr. Hellenthal has read his proposed amendment and has suggested there are other proposed amendments, or will be. In order that we have the full picture before us, might it be possible that all presently prepared proposed amendments be read at this time?

PRESIDENT EGAN: Mr. Riley, an instance such as we have before us at the present time arises, the Chair feels it is only in fairness and in keeping with proper information coming before the delegates that your request be granted, that it is in keeping with what is probably going on in the minds of most of the delegates if the proposed amendments were allowed to be known to the delegates. Mr. Victor Rivers.

V. RIVERS: Along that line, speaking for the Committee, as of yesterday I had an amendment prepared which would insert in Section 6 the word "general" before the word "election" in line 21. We discussed that and that would then leave the procedure as to the primary in the hands of the legislature, and it would prescribe only that the general election would be the one in which he would, by constitutional act, be required to run on the joint ticket. While I am on my feet, Mr. President, I would like to speak on this a little further. We put in rather a heavy day yesterday. Everybody was somewhat weary and probably somewhat tired of listening to me and others speak on this subject. We heard this referred to as a "pal", "buddy", "flunky" and a number of other package deal systems, but I just want to point out to you in all sincerity, regardless of the sarcasm or ridicule attaching to the presentation of this section by the Committee, it is the "granddaddy" system of the American system of government, inasmuch as it is a part of the national administration's original organization, which to my way of thinking has worked quite successfully. It is also the method adopted and used by the most populous and the wealthiest state of the union, the State of New York; and I want to say again that I for one feel that we have what you call the strong executive proposal in theory. It has been used in the State of New Jersey. However, in the time that it has been used it is quite evident to me that we have not yet had enough length of time to study the situation as to how it is actually working there. To amplify on that, I want to say that in the American system of political life and of government in the cases of where offices are opened up for the people to fill, there are in practically no cases any requirements for special skills, training or experience. But it has been my observation as you go through the elective life of our government, elected officers, that there are certain well established channels that present themselves through which the main group of your qualified people for handling government positions come. There are

certain channels which set up a flow from a young, inexperienced individual to average maturity in the political life, to the higher positions that they later occupy in our political life. I also want to say that from the State of New York have come some of the greatest men who have held some of the highest positions this nation has to offer. I cannot go along with this theory that we are electing when we put in public office by a vote of the people the type of man that has been described here. I know at times he probably will not always be the biggest or the best man that might be available, but on a great many of the average times you will pick out men who have caliber for growth, and by reason of their experience in these positions do grow. I just wanted to follow through the method by which many of our people become eligible to hold high public office. It seems to me, as you look back on people around us here in Alaska that many of them are first elected to school boards, city councils; they later become the mayor; perhaps from that office they go into the house or perhaps they go directly into the senate. There they are exposed to a certain amount of daily contact during the sessions with the government functions. There they gather a certain amount of insight into, experience with handling, and understanding of our system of government. From there they might go into a Territorial office, either elective or appointive. Of course, they become eligible for re-election to the one top office to which our people elect the delegate to the United States Congress. I just wanted to point out to you that the honorable Anthony Dimond came through that channel more or less. He was a school teacher at one time, a prospector, later an attorney, then he became a member of the legislature, sat for a number of sessions and gained the confidence of the people and then became our delegate and one that was highly respected. The next situation that you might notice is the channel through which Delegate Bartlett came. It was somewhat similar. He was first the reporter on the Fairbanks paper; then he was the secretary to Judge Dimond; then he returned to Alaska and was in charge of certain functions of the FHA when it was first introduced in Alaska; next he mined; then he went back into public life as the Secretary of Alaska. Next he was elected delegate. Now it seems to me that as we set up this pattern of government, the ideal of the strong executive, one man sitting up here, unbiased, with freedom to make a choice of all these men he is going to appoint, without any strings on him, basing his appointments strictly on merit, experience, and ability, that you could well say that was the ideal situation, but in practical everyday political life, can you say that the governor who is elected will not have obligations, will not have favors to repay to certain individuals and groups, will not have endorsements of individuals which he must consider? It would be very naive for us to think that that were the case because there are going to be many considerations that enter into the selection of his appointive officials, as there would be if the people were to

select an elective official. It seems to me that the states and the national government in their situation, similar to what we have proposed here, have provided for not only working individuals in those offices, they have provided an avenue of interest for experienced people to be presented to the voters of the Territory, men who have actually gone through the elective process, men who have held administrative office at the statewide level and men who are therefore generally qualified if otherwise acceptable to the people to be elected to high office. I feel that we must give consideration to allowing people to be presented to the public whom they know and whom they have every reason to trust based upon actual experience and knowledge of them. I know there is nothing more frustrating than to go into a ballot box and have a ballot and know one or two of the people and have before you all new untried names. They might be good names in business, in social or civic club work, but you don't know what they can and will do in the face of a government obligation, in sitting in a government office. It is very difficult to decide. Of course, the method of the American system of electing people to political life is that of trial and error, but as the trial and error system goes on into higher office, they gradually weed out some by reasons of failure of health, others by reasons of lack of desire or lack of interest, and others by reasons of inability or incompetence. It seems to me that in setting up some elective offices in the state you are preparing an avenue of ingress for the same people to be presented to the voters, and this method we have proposed is one of the methods used successfully in, as I said, the most populous and richest state in the union and in our national government level. So I personally do not feel you should attach too much importance to the "buddy-pal" package description of this type of administrative government, but weigh it strictly on its merits. I believe that by establishing this method we do open an avenue of ingress for people who have been subjected to the public will at the polls, and people who have been also subjected to day-by-day contact with our administrative government. I don't want you to get the impression there is one little channel through which people will flow to the head office of our state, but I think we must admit that in all high political offices other types of avenues have been opened. I think particularly in many of the states, it appears to me in the case of New Jersey for instance, the number of high appointive officials and the one elective governor, it seems to me the best avenue of ingress would then be through the legislature where they have been elected through part of the state, and that is always a fruitful field for people who are interested in and go to high places in our government, but also it seems to me that in casting around, the voters would probably indicate and select someone theoretically trained in political science. We have had the experience in our national life where men who come up for the offices of President or Vice

President are men who have either been state legislators, then state governors, then congressmen perhaps, but very seldom ever does the head of an administrative department be nominated for office of President. The same applies to Vice President. There have been exceptions where, for instance, they selected and nominated Woodrow Wilson, who had been and was a political science professor. There have been men who have come into high public office through the academic field; there have been men who have come in through the business field; but through the years a general pattern establishes itself where the main portion of people trained for public office are drawn upon to be voted on by the people at the polls, and that general avenue determines the success and quality of men they choose, and I submit to you that the men who have been chosen for the chief executive and the assistant chief executive offices in the State of New York have been on the average good or better than any of the executives chosen in any states of our union. Therefore, I again urge that you seriously consider the plan the Committee has submitted. As you noted, I will submit the amendment after the word "election" stating that they will be elected jointly at a general election. Nominations then would be made in any manner prescribed by the legislature.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: May I address a question to Mr. Rivers?

PRESIDENT EGAN: You may, Mr. Victor Fischer.

V. FISCHER: I have been trying to find out when the New York system was adopted. I see New Jersey instituted its system of a single governor in 1947. When was New York's adopted?

V. RIVERS: The New York Constitution is an old one. It was amended in 1948 and then amended again to its present form with minor modifications in 1953.

V. FISCHER: Was the joint election of governor and lieutenant governor adopted in 1958?

V. RIVERS: I can't answer.

HURLEY: 1938.

V. FISCHER: Thank you.

McLAUGHLIN: I would like to ask Mr. Rivers, in the last quarter of a century, could he tell me which governors of the State of New York served as lieutenant governors or in any subordinate capacity in the cabinet in the State of New York prior to their

becoming governor? For your information Mr. Rivers, I'll give you the names. Thomas Dewey, Alfred E. Smith, Herbert Lehman and Franklin Delano Roosevelt.

PRESIDENT EGAN: Mr. Armstrong, would you take the Chair? (Mr. Armstrong took the chair at this time.)

EGAN: Mr. Chairman, I would like to say that I realize that the Committee on the Executive has put in a lot of days, a lot of hours, just simply a lot of time on this particular question. What they have come up with they feel is the best that is possible. I know that and give them every credit and I have respect for their feelings, but I have not been completely in favor of this type of provision at any time since it was under Committee discussion. I am opposed to having the man who would be next in line in succession to the governorship not actually elected in some manner by the people of the new state. I would like to say as to that that I also have that feeling with relation to the Vice Presidency of the United States, that I am not in agreement with that particular means that we now use and have used all along through our history in providing for the Vice President of the United States. This feeling does not conflict at all with my feeling on the national level relative to that question. I feel that as Mr. Victor Rivers has stated, that if such an amendment -- I voted for the deletion of Section 6 -- with that feeling in mind, that actually a secretary of state won't be running for any office. The people won't have one thing to say about who shall be secretary of state under Section 6 as I read it. Someone will choose that particular man and he will become as Section 6 reads, "the governor of the State of Alaska." Now, if as Mr. Victor Rivers has stated, he will offer an amendment that will definitely guarantee to the people of Alaska that the man who will become secretary of state will be elected by the people in a primary election, then I would agree with going along with Section 6 if I knew that that particular amendment was going to be offered, and that we were going to have a chance to vote upon that. I also don't agree with the line of succession, with the secretary of state being appointed. I can see no reason why we should not have Section 6 as it is as well as accepting an amendment that would allow the governor to pick his own successor. I am not any more in agreement with that than I am with Section 6 as it is written now. In thinking this over, I am also not in agreement with having an amendment produced that will let the direct line of succession go from the governor, say in the manner that was suggested, that the secretary of state if the governor died, would call the legislators into session and then they would select the governor. I am not in agreement with that because the people do not elect the representatives to the legislatures and their senators with the idea that one of their number will become the governor of Alaska. I think that the best idea so

far that I have heard is this particular proposal that we nominate, at least give the people some choice in the matter, it will be a real choice. Let them nominate the man who will run in the package with the candidates for governor in the general election. I think that that would be a proper means of allowing the people to elect their governor and also the successor to the governor. I would go along wholeheartedly with such a proposed amendment. That is my feeling on this question, and if I knew that that amendment was going to be adopted, I would then vote against the motion to strike Section 6 from the proposal.

CHAIRMAN ARMSTRONG: Mr. Hellenthal?

HELLENTHAL: May we have a five-minute recess?

V. RIVERS: I object. I wanted to just make a statement to Mr. Egan to this effect, that I had such an amendment on my desk. Out of deference to the fact that Mr. Buckalew had submitted an amendment and had then withdrawn it, I felt that he had precedence last evening in presenting this amendment, so I allowed him to present it before I put this one on the floor for the reason I felt he had precedence in his original submission and withdrawal.

CHAIRMAN ARMSTRONG: I believe if we would recess until 10 o'clock we could probably get this worked out. The Convention is at recess.

RECESS

ARMSTRONG: The Convention will come to order. Mr. Egan?

(President Egan took the Chair at this time.)

PRESIDENT EGAN: The Convention will come to order. Mrs. Nordale.

NORDALE: Mr. President, I think that Mr. Davis put his finger on the problem when he said it was a matter of do we want to elect a secretary of state or do we want to appoint him. I am not too sure just how strong my convictions are, but I would like to say this, that one of the problems that has faced most of the states, and I think one of the reasons why there has been a swing away from elected officials is that for one thing, as the years go by the ballots become cluttered with elected officials. Of course, ours does not look as if it would be in much danger, except we do have our election of senators, representatives, and at least three members of Congress to elect plus initiatives and referendum and all that sort of thing, but the swing toward the appointment of officials has been to keep some sort of coordination in government. Any man elected by the people is pretty independent, and that is why you have a lack of coordination in government where you have a lot of elected officials. Another thing is that the voters become apathetic as time goes on and pretty soon you

have a small percentage of people electing your officials, whoever they may be. One reason I don't think we should be too fearful of the governor's making a bad appointment is that we are giving him the authority to make all the other appointments. The secretary of state is actually an administrative official, really. Normally he has a lot of administrative functions, just as our present Secretary of Alaska has. He does not have to necessarily have the qualities that would make him a good governor, although he should be in very close touch with the governor as he would be under our thinking here, so that in the event of an emergency the executive department would continue to run smoothly when the governor was absent. So there is a good deal to be said on both sides, and so it seems to me it does boil down to just one thing, do we want the people to elect this man or do we want him appointed?

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, when the vote on the Buckalew amendment was announced, I was amazed. Do you remember when we were considering the initiative and referendum, how this body went wholeheartedly for allowing the people to have a hand in their government? It seemed to be the feeling of the assembly at that time that they should be allowed to initiate laws on their own without going through the legislative process. They should be allowed to recall officials and that certain matters should be referred to them by the legislature or the governor on occasion. Now the pendulum has swung the other way. We don't want the people to have a say in it at all. If we adopt this amendment of Mr. Buckalew's it will be the same as abolishing the republican form of government. It is true there is one official elected, only one, and he will be surrounded by his appointed satellites, and I would call that a dictatorship, in a mild form at least. Of course, his term runs out, but while he is in office it is a dictatorship. Now, it goes farther than that. If he appoints a secretary of state and the secretary of state succeeds him, he is appointing his successor. That is not done anywhere else under the American flag. It has been done in some South American countries. They tried to do it in Russia but one or the other of them is assassinated. That is not the American way. A dictatorship or ruled by one man, even if you don't call it a dictatorship, is efficient. The government can move quickly to accomplish anything. It is much more efficient than our usual government, but that is all that can be said for it. The American people have always chosen to elect their high officials, even if there are some disadvantages. They believe that it is worth it to have a say in their own government, and it is worth it in Alaska, too. I believe that the people should be allowed to elect more than two; not too many, we don't want

to clutter up our government with elected officials whose interests might run counter to those of the governor, he should be able to work with his own team, but there is some point at which we must stop. If we do reconsider -- Mr. Rivers has an amendment -- I would like to point out that is a committee amendment. It was not just approved by one man, and we believe that it will correct a situation in that it will insure anyone being able to file in the primaries for the position of secretary of state without the necessity of the governor handpicking the candidate. I believe that we should vote to reconsider and vote against the Buckalew amendment.

PRESIDENT EGAN: Mr. White.

WHITE: I will be brief. I agree with the line of demarcation as drawn by Mr. Davis and Mrs. Nordale. I think the thing to get settled here is whether we want an elected or an appointive secretary of state. I think the reason we got into this discussion probably was because the Committee compromised between a strong executive on the one hand and trying to give the voters another elected official on the other and I think we came out in all good faith, but as most compromises, it is something that is neither fish nor fowl. In answer to Mr. Boswell, I think it has been shown you can go the route of having a secretary of state elected; you can have candidates run in the primaries for governor and for secretary of state in both parties and then you can go on and say, pair up the highest in each race for each party and run them against each other in the general election; then you could have a truly elected secretary of state. The only trouble is that that promptly runs counter to the theory of the strong executive. As far as I am concerned, I don't have too strong of feelings one way or another, but this certainly has to be thrown in one direction or another. It appears to me that the Committee, in their anxiety to get this section back in, is talking more and more against the theory of the strong executive. I really feel that some amendment such as Mr. Hellenthal has suggested is more in keeping with the Committee's theory of the strong executive.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I have not spoken on this thing so far, and it occurs to me that maybe it is a matter of wording in our arguments here. I don't think the question is simply a matter of electing or appointing a secretary of state nor one of a strong or weak executive department. I think it goes a little further than that. In my mind it is a question of a very strong or a strong executive department. The word "strong" is a relative term. Certainly if we elected both officials at the general election separately we would have a stronger executive

department than a great many states do who elect a dozen or so officials, so it is a relative term. Now, I think our executive government will be strong enough if we reconsider our previous action and adopt a method by which the people will elect the governor and secretary of state at the primary election; as Mr. White said, at the general election pair them off and put them in which will guarantee them being at least from the same political party, so I shall vote differently than I did before and vote against the Buckalew amendment.

PRESIDENT EGAN: Mr. Gray.

GRAY: I'll speak once and forever more on this subject. To me, I feel that the Committee's plan is the best. We are talking about one thing, we are talking about the governor and his successor. The probability of a successor is possible but in general we can assume that the elected governor will carry out his term. There is a great deal of emphasis placed on the secretary of state becoming the governor. Now what we are talking about is efficiency in the state government, and we are selecting our man by the voice of the people and they are selected on a popularity basis with efficiency as a second regard. We try to get the most efficient man that is popular. In the Committee plan I do believe that you will receive the most efficient secretary of state, because if he is selected and if he is unpopular, it will be a detriment to the man running as governor. I believe like Mr. Nerland, I believe that in selecting a secretary of state we must select him for popularity but primarily for efficiency, which is the purpose of the whole executive department.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I support the Buckalew amendment and in turn the proposed amendment which Mr. Hellenthal is trying to submit. I feel that this issue is entirely a political issue within parties. I can see that under the particular system that we have here that we are just trying to pull a veil over the voters' eyes as to allowing them to elect a secretary of state because it ties them too closely to the governor. I could see that in a political convention that this Section 6, as written, would enable a party to set up a fairly strong piece of political machinery. I can't see where the primary election would do so good because we all know there are factions in political parties, and you know that from time to time in our past history we have had very strong feelings and splits in both major parties in Alaska, so I can see where we would have a strong man of one faction running for secretary of state and a strong man of the other faction running for governor, and if they were tied together

in the general election it would not give you your Utopia of a strong executive. I feel that by appointing, that your governor-elect or your governor that becomes elected, would be more or less the leading figure of the political party that gained control of our government, and feel that to this end he should have the prerogative of choosing his own cabinet or major officials.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, along the lines of information as to what a proposed amendment will be if Section 6 is restored, I have drafted this at the request of the Committee.

McCUTCHEON: Point of order, Mr. President. It seems like we are getting too far afield from the matter at hand. I think we should vote on this thing. Everyone understands that there are going to be a number of amendments submitted to adjust this to what we hope will be acceptable to all. My point of order is that if we get aside and start reading a lot of other amendments and other material that don't pertain to the question at hand, I think we are just wasting our time.

PRESIDENT EGAN: As to your point of order, Mr. McCutcheon, we had gone on the assumption that this was so important that we allowed other amendments to be read by general consent. Mr. Ralph Rivers.

R. RIVERS: Just for information, others have given information; I would like to give a little on behalf of the Committee as to what to look forward to if Section 6 is restored. Section 6, line 20, on page 2, after the word "governor", insert "he shall be nominated in the manner provided by law for candidates for other offices", and then we retain the rest of the section. That would mean that on any primary election system every candidate runs on his own candidacy. The secretary of state would run as provided by law for all other candidates, and if they ever abolished the system of primary election and went back to the convention system, your language would still be broad enough to make it flexible.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: I would like to say just a few words now. I think the matter of efficiency could be carried too far. If we wanted efficiency in government we possibly should hire a governor as well as the other officials. I think the people should have a chance to elect their governor and the second in succession and for that reason I would be against the Buckalew amendment, and

would be in favor of Section 6 provided it could be corrected so that the people have a choice of who is nominated.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I have not spoken upon this matter before. I believe there has been a misconception as to the meaning of Section 6. I have been against the Buckalew amendment because I felt that the Section 6 possibly could be amended so that the objections that have been voiced to it could be met. Now, my thinking upon this particular matter is that the secretary of state would be nominated by his political party in the same manner that all other elected officials of the Territory would be selected; that is, at the present time we have the primary system and the person would be selected in the primary. He is selected in the same manner as the legislators and as the governor. Whoever chose to run for secretary of state upon the Republican party or for the Democratic party would be entitled to file his application or his nomination papers the same as anybody else and then after the primary election the man having the highest number of votes in that party would be automatically paired with the man who received the highest number of votes for the nomination for governor, and they would run as a unit but not individually, so that a vote for the governor would be a vote for the secretary of state. So now, after listening to all this argument, after talking to quite a number of the members yesterday and this morning, I think that there was a thought in the minds of many that the secretary of state was going to be a handpicked man. But I have never had that interpretation of it. If I felt that the secretary of state was going to be handpicked, the people were not going to be allowed to select that secretary of state by our system of nomination which at present is by the primary, I would be against Section 6, but where he is going to go on the ballot of the general election, how would he get on that ballot unless he was selected by the people in the primary? It is the only way he could do it. Now I have cooperated with Mr. Rivers here in that amendment. I think that should remove all objections here so that he could be nominated in the same manner as all other elected officials of the Territory, and then we can put in there that after nomination the man receiving the highest number of votes in the primary for secretary of state would be paired with the man receiving the highest number of votes for nomination for governor, and they would run by unit or along that particular line. I think that removes the objection of every person in this Convention, and I think an amendment along that line would meet with approval and get this matter settled and I think the only way to do it is to vote down the Buckalew amendment, and we'll get a new start by amending that Section 6,

and get it back in there as amended.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I have heard a lot about this Buckalew amendment. I am not ashamed of the amendment even though one of the delegates referred to it as the "totalitarian amendment". I don't think I am a fascist because I introduced that amendment. If I said anything which was intemperate I apologize to this body, but I feel pretty strongly on this particular matter, and I seem to have strong feelings on practically everything that comes up on this floor. Maybe I got that from my mother. I don't know, but if I were the Chairman of this Committee and I had Mr. Hellenthal's amendment offered to me, and I had talked consistently and long for a strong executive, I would support Mr. Hellenthal's amendment without reservation. Now, I think that the Chairman of this Committee has got himself in an untenable position because even though we amend it according to the amendments that have been offered, you are going to, in effect, destroy the strong executive because we all know that in Alaska my party, which is the Democratic party, has splinter groups in it. The Republican party has splinter groups in it, and I can envision that you will have a secretary of state, although he is running under the same flag, who will be miles apart, and I support Mr. Hellenthal's proposed amendment, and I am for a strong executive, and I go along with Mr. Rivers' thinking on this matter to its logical conclusion. I think they should all be appointed.

SWEENEY: May I just have a few words to close, since it is my motion?

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: I just wanted to say that I want to have a secretary of state elected. I want him compatible with the governor. I want him nominated in the primary and I want him teamed with the governor in the general election. That is all I want, and I do not believe that it is destroying the strong executive. To talk about splinters in either party, I think if you did happen to get one from one faction or one from another, it might be just the thing that would cement your party, and I hope you vote down the Buckalew amendment.

R. RIVERS: Mr. President, point of clarification. Will the Chair explain what a "yes" vote means and a "no" vote means.

PRESIDENT EGAN: Yes, Mr. Rivers, the Chair will. The question is, "Shall the proposed amendment as offered by Mr. Buckalew be

adopted by the Convention?" Now if you vote "yes" you delete Section 6 from the committee proposal. If you vote "no" you retain Section 6 in the committee proposal. Mr. Robertson.

ROBERTSON: Mr. President, we have not voted on the reconsideration.

PRESIDENT EGAN: The moment Mrs. Sweeney moved her reconsideration it brought Section 6 before us automatically for debate, the amendment in its original form, and to vote "yes" you vote to delete Section 6 and if you vote "no" you vote to retain Section 6 in the proposal. The question is, "Shall the proposed amendment be adopted by the Convention?" The Chief Clerk will call the roll.

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

Yeas: 9 - Buckalew, Coghill, Emberg, V. Fischer, Kilcher, Lee, Poulsen, Sundborg, White.

Nays: 46 - Armstrong, Awes, Barr, Boswell, Collins, Cooper, Cross, Davis, Doogan, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney, Tavlora, VanderLeest, Walsh, Wien, Mr. President.)

CHIEF CLERK: 9 yeas, 46 nays.

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

SUNDBORG: I move and ask unanimous consent that we recess until 10:45 a.m. sharp.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, for the purpose of announcing and recognizing that in the gallery we have the Commander of the Veterans of Foreign Wars of the Department of Alaska, and the Department Service Officer, James Brunette.

PRESIDENT EGAN: Commander Brunette, we are happy to have you here with us. The Convention will stand at recess until 10:45 a.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Hilscher.

HILSCHER: Mr. President, the Constitutional Convention has in the hall at the present time Sir Hubert Wilkins. He is not only a noted Arctic explorer, but he is one of us insofar as the first honorary doctor's degree, which he has accepted, from our own University of Alaska. I ask unanimous consent that Dr. Sir Hubert Wilkins be given the privilege of the floor at this time and be permitted to make some remarks.

PRESIDENT EGAN: Dr. Wilkins, we will be happy to hear from you.
(Standing applause)

DR. WILKINS: Ladies and gentlemen, I might pull an old boner and say this is an unexpected privilege, but I feel sure that all of you Alaskans have met with unexpected privileges since the time you arrived in this country, and all of us who are interested in Alaska are expecting many privileges as a result of your meeting here today, and because all the people that I meet in traveling around the various states of the Union and in other countries as well are turning their attention to this part of the world realizing its importance. I find that when people ask me to speak at public meetings they welcome the title I give them, and that is the "Importance of the Arctic in World Affairs." I believe this is a stage where the importance will be spread through the wide world, and its significance will be understood. I am looking forward as you are to the development. I am only too sorry that my time does not permit me to spend more of my work in Alaska, do more here for you, but you can be assured that my sympathy is with you and every opportunity I have I will try to help with what you are trying to produce in this great country of yours. It is a great privilege to be here and I want to thank you very much and very sincerely for this recognition. (Standing applause)

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Rivers.

V. RIVERS: Mr. President, in line with the remarks made before the last motion was voted on, to effectuate the ideas submitted and discussed in Committee and on this floor, I will submit an amendment at this time.

PRESIDENT EGAN: You may submit your amendment, Mr. Rivers.

V. RIVERS: It is the committee amendment, Mr. President.

PRESIDENT EGAN: The Chief Clerk will please read the proposed committee amendment.

CHIEF CLERK: "After the period following the word 'governor' on line 20 of Section 6 insert the following sentence, 'He shall be nominated in the manner provided by law for nominating candidates for other elective offices.' Delete the word 'election' on line 21; line 22, after the word 'law', insert 'for general elections'."

PRESIDENT EGAN: What is your pleasure, Mr. Victor Rivers?

V. RIVERS: I will move and ask unanimous consent for the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent for the adoption of the proposed amendment. Is there objection?

HELLENTHAL: I object.

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I might say this brings the matter up in regard to the election of the secretary of state in such a manner that he shall run in the primary in the same manner that the law shall provide for all other elective officials to run. It still also ties him into running on the joint ballot with the candidate for governor nominated for his party at the general election. That was the intent in discussing this that he would be nominated by the people.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by the Committee be adopted by the Convention?" All those in favor will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Miss Awes.

AWES: I have an amendment, Mr. President.

PRESIDENT EGAN: You may present your amendment, Miss Awes. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 18, page 2, strike the words 'secretary of state' and substitute 'lieutenant governor'; line 21, strike from 'and' through word 'governor' ending on line 2, page 3; line 2, page 3, strike 'secretary of state' and substitute 'lieutenant governor'; lines 4, and 5, page 3, strike words 'secretary of state' on both lines and in each case substitute 'lieutenant governor'."

AWES: I move the adoption of the amendment.

PRESIDENT EGAN: Miss Awes moves the adoption of the proposed amendment.

BUCKALEW: I second the motion.

LONDBORG: May we have it read again, please?

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

(The Chief Clerk read the proposed amendment again.)

AWES: Some of the delegates here were perhaps surprised at the amendment thinking that the idea of a lieutenant governor had been completely buried. That is what bothered me. I am afraid that the idea of a lieutenant governor was buried perhaps too soon. The only argument I have heard is that the lieutenant governor does not play too important a role and it costs money; therefore we should do away with him. Yes, it does cost something to have a lieutenant governor; you have to pay him a salary; you have a few extra lines on the ballot; you have to provide an extra room in the statehouse. When you come down to it, it costs only a drop in the bucket for the total cost of running a state. Therefore, I think the question is not what does he cost, but does he serve a purpose? I think he would serve one very real purpose. I agree we should elect a successor to the governor. I think Alaskans have been so fed up in the last 50 or 75 years with appointive governors that they don't want to hear the word again. However, it bothers me considerably to elect the secretary of state. I don't think we should put over what some people call a package deal and give the people the form of electing a secretary of state without the choice. On the other hand, to elect the secretary of state independently, we know there are not only different parties in Alaska but there is a lot of factionalism in the parties, and if you get a lieutenant governor who is of a different faction than the governor, because he isn't too effective while serving as lieutenant governor it would not make too much difference, but the secretary of state is right-hand man to the governor, and if you get a secretary of state who is of a different party or of a different faction in the same party, he can hamstring the governor and make our whole government ineffective for the whole four years he is in office, and I think the fact that we want a strong executive makes the problem even more pressing, and therefore I suggest that we consider or reconsider, as the case may be, the idea of having a lieutenant governor in the State of Alaska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Miss Awes be adopted by the Convention?" Mr. McLaughlin.

McLAUGHLIN: I am a bit confused. Would the secretary read the section as it would read if it were amended.

PRESIDENT EGAN: Would the secretary read the section as it would read if it were amended.

CHIEF CLERK: "There shall be a lieutenant governor who shall have the same qualifications as the governor. He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor. The candidate for lieutenant governor who runs jointly with a successful candidate for governor shall be elected lieutenant governor. The lieutenant governor shall perform such duties as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: Mr. Riley.

RILEY: I would like to address one question to Miss Awes. In distinguishing between the two titles did you mean to distinguish between duties in your discussion, Miss Awes?

AWES: Yes, I did. I was proposing a lieutenant governor in the traditional sense and then have the usual appointment of secretary of state by the governor to perform the duties of a secretary of state.

RILEY: In the last sentence of the section, did you propose to submit another amendment in that respect?

AWES: Frankly, I did not know whether to strike that sentence or not, so for the time being I left it alone. If it is confusing it should be stricken because I am proposing a lieutenant governor in the traditional sense.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: "The candidate for the lieutenant governor who runs with the successful candidate for governor shall be elected" -- in leaving that sentence in, did you mean to retain the original idea that the two would run together at the general election? You struck that earlier part -- I just wondered what your thinking was.

AWES: I think maybe that sentence should be stricken too because I think the lieutenant governor should run independently the same as any other officers on the ballot.

PRESIDENT EGAN: You ask that one of the sentences be stricken?

AWES: Yes, I think the sentence Mrs. Nordale referred to: "The candidate for the lieutenant governor who runs jointly with the successful candidate for governor shall be elected." I think that should be stricken also.

PRESIDENT EGAN: Is that on page 3?

AWES: First sentence beginning on page 3.

PRESIDENT EGAN: You ask that the deletion of that sentence be added to your proposed amendment? Is there objection? Mr. White.

WHITE: Mr. President, I was confused. I think maybe now I am straightened out. You intend it to be possible for a governor to be elected from one party and a lieutenant governor from the other party?

PRESIDENT EGAN: Miss Awes.

AWES: Well, I think the two officers should be elected independently. I don't know too much about election procedures, I will frankly admit and the main thing is to get the idea of an independent lieutenant governor as they have in other states, before the people. As to procedure, if somebody wants to make further amendments to this section, I have no objection, but that was my idea that we have a lieutenant governor in the traditional sense as they have in most states.

WHITE: As your amendment now stands, it is distinctly possible to have a governor elected from one party and a lieutenant governor elected from another party, unless it is further amended?

AWES: As a practical matter I don't think that is apt to happen.

WHITE: But it is possible?

AWES: Yes, I think it is possible.

PRESIDENT EGAN: The addition to the amendment has been adopted and that is that that sentence on page 3, "The candidate for the secretary of state who runs jointly with the successful candidate for governor shall be elected secretary of state." That sentence has become a part of Miss Awes' original amendment. Mr. Taylor.

TAYLOR: I was just going to ask if the Chief Clerk read into this section the amendment that was just adopted.

CHIEF CLERK: Yes.

TAYLOR: And I would like to ask Miss Awes one question if I could through the Chair.

PRESIDENT EGAN: You may, Mr. Taylor.

TAYLOR: Miss Awes, then you intend to offer a further amendment in this matter so that if you elected the lieutenant governor, then you will make other amendments in Section 7 where the secretary of state is named?

AWES: Yes. There would have to be some changes made in Section 7. If I may, I would like to request about a two-or three-minute recess and ask unanimous consent.

PRESIDENT EGAN: Is there objection to the Convention standing at recess for two or three minutes? Hearing no objection, it is so ordered.

RECESS

PRESIDENT EGAN: The Convention will come to order. Miss Awes.

AWES: If nobody else cares to speak, I will make my closing remarks.

BUCKALEW: Mr. President, I seconded Miss Awes' motion so I wanted to speak on it. I had no objections to changing the title of secretary of state to lieutenant governor, using the same machinery that we had, but as I understand Miss Awes' position now, he should run independently and perhaps even be of a different political party. I think that Miss Awes' amendment should be promptly voted down.

PRESIDENT EGAN: Mr. Barr.

BARR: I have always been a supporter of statehood, but, of course, I have always presumed that good sense would prevail, and in our first days of the statehood we would run it on a rather economical basis, and I would like to point out that Mrs. Hermann has stated that the chief objection to statehood by those who are against it has been the cost of supporting a state government. Now, if we had a lieutenant governor who, in the traditional method, has been nothing but a figurehead drawing a high salary, add that expense to the greater number of legislators provided, and the people reading this constitution, going to the polls to ratify it, I am afraid it will turn them against it. Now, if we merely change the title, if we take this same section and make the lieutenant governor a working man, give him the same duties as the secretary of state, but call him a lieutenant governor, that is still bad for the same reason that

people know what a lieutenant governor is. Traditionally throughout the United States he is a figurehead, and I'm afraid they won't quite absorb this and they will think we are putting a man on the payroll to do nothing. They might understand the title, secretary of state. A secretary usually works I know our secretary does. I think this is bad policy all the way around. We should support the section as it stands.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Yesterday, during all the debate here I think there was no one that spoke about a lieutenant governor unless they mentioned it was a front, you might say a public relations man in a way, and some referred to it as a sinecure, and I believe that that connotation as to lieutenant governor has been perhaps deserved in many instances. So I think now if we would set up a lieutenant governor by this amendment of Miss Awes we are just adding, you might say, a cushy job to somebody as a sinecure just for the purpose of having the name, but we still have to appoint a secretary of state to do the work that is contemplated under the way the section is now without any further expense. I think it would just be an added expense and an unnecessary officer in the state government if we adopt this amendment.

PRESIDENT EGAN: Miss Awes.

AWES: I will make a few remarks in closing. I think that the question was asked and the remarks made indicate some confusion as to the purpose of my amendment. In the first place, I think that I answered in my opening argument Mr. Barr's objection to the cost. I agree we should not create offices just to run up the cost of government, but I think that first we should consider, is this an office that we need? Does this office serve a purpose? And I think it does, and again, as Mr. Barr said and Mr. Taylor perhaps indicated, I just wanted to change the name from lieutenant governor to secretary of state and let the lieutenant governor perform the functions of the secretary of state. There is nothing further from my mind. The whole idea is that I think we should elect not only the governor, but also the successor to the governor, but I don't think that that successor who may be somebody who opposes the governor in policy should be the righthand man to the governor as the secretary of state probably will be. Therefore, I do think the lieutenant governor does serve a purpose. Now the question has also been raised, would it be possible to have a lieutenant governor of another party? I think perhaps it is possible. I think that the way it is set up in the states that it is possible. As a practical matter I don't think it will often happen, and if somebody could provide an amendment that would assure that the people elected a lieutenant governor -- not just in form, but actually a lieutenant governor

and still of the same party I would be the first to vote for such an amendment. I personally don't know how to do it, but I think the danger of having the two of separate parties, which won't happen very often, is still preferable to either not allowing in actuality the people to elect your successor to the governor or to let them elect independently someone who may hamstring the governor for four years.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Miss Awes be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "yea", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. Ralph Rivers.

R. RIVERS: I now move reconsideration of my vote on Mr. Robertson's amendment to Section 2.

PRESIDENT EGAN: Mr. Ralph Rivers now moves reconsideration of his vote on Mr. Robertson's amendment to Section 2.

HELLENTHAL: I thought we were considering Section 6.

PRESIDENT EGAN: The move for reconsideration, Mr. Hellenthal, is in order at any time that the maker or the person who served notice so desires.

CHIEF CLERK: "Section 2, after the word 'states' on line 5, insert 'and of this state'."

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, after I voted for recognizing state citizenship yesterday, Mr. Buckalew came up with that rare stroke of brilliance which pointed out that thus far we have not been citizens of any State of Alaska; we are a Territory. Therefore, we have only enjoyed citizenship as citizens of the United States. After we injected in here that you had to be a citizen for seven years, a citizen of the state for seven years, we would be all disqualified to be governors for seven years, including the various proponents of that at the outset, and Mr. Buckalew said we had "pulled a boner" or words to that effect. I thoroughly agree with him. After we stop and analyze this thing we would have to wait seven years to be eligible in this particular respect, and it only confuses the matter. He said this was going to cause a lot of trouble and I think it would. So the purpose of the reconsideration is to have us vote again on that particular amendment. Mr. Robertson tried to withdraw it but encountered objection and it went to vote and we voted to insert "and of this state", but without fully comprehending what we did at that time, so I urge that we vote the opposite way this next time.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: I don't feel too strongly. I would like the term "citizen of the state" to be left in. Whether it makes any difference or not -- the ordinance of transitional measures will contain an ordinance to the effect that citizens of the United States residing in the Territory of Alaska will become citizens of the state. That is one of our general clauses along with the continuation of laws, so that particular point will be provided for. Now, if it is the wish of the delegates to also provide for it here, it would have no effect either way.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Mr. President, I supported merely an assertion somewhere in the constitution of the principle of citizenship in the State of Alaska. I don't concur with Mr. Ralph Rivers that we imposed the requirement of seven years' state citizenship as a condition for nomination for the elected governor, but I will gladly agree and fully at this point with Mr. Ralph Rivers because of Mr. McNealy's statement that recognition of state citizenship is given in transitional matters.

PRESIDENT.EGAN: I wonder if it would be in order if the Chief Clerk would read Section 2 in its entirety as it would appear at this time.

CHIEF CLERK: "The governor shall be not less than thirty years of age, and shall have been for at least seven years a citizen of the United States and of this state and a resident of this state seven years next preceding his election."

HELLENTHAL: I think that displays some weakness in our system here because it was only through the timing that that clause got inserted after the words recognizing United States citizenship because when the vote was taken we merely voted to recognize state citizenship. There was no qualifying language on it at that time, so it is merely a procedural weakness.

PRESIDENT EGAN: Miss Awes.

AWES: I spoke yesterday against using the phrase "citizen of the state" in Section 2, and I will speak again against it today. My argument is pretty much a legal argument. The whole question of residence, domicile and citizenship is one of the most confused in the law. We have not been as concerned about it in the past as we will be when we get statehood because in the past we haven't been a state and there has not been this interrelation with other states. But the Constitution of the United States says that, "A citizen of the United States shall be a citizen of the state wherein he resides." Therefore, before we put in the

words "a citizen of the state" we provided that he would have to be a citizen of the United States and a resident of the state, and then by virtue of the words in the Fourteenth Amendment of the Constitution he thereby becomes a citizen of the state. I know enough about court interpretation to know that the court is interpreting a section of either a constitution or a statute, they say that the words were deliberately put in, they must mean something. They will say, "These people who drew up this constitution must mean something. What did they mean out of the ordinary in the words 'resided' and 'citizens'." It seems to me that there are two things we can accomplish by putting the words "citizen of the state" in there. We can cause confusion and we can make additional work for the lawyers for the next 50 or 100 years. I can't see we accomplish anything else. Yesterday, just before we voted, it was said that these words were used in two new constitutions, New Jersey and Hawaii. I got these two constitutions since we voted and I read them. In the qualifications for governor the language used is almost identical with what came out of the Committee. The particular sections in which the words "resident" and "citizen" were used in each case were dealing with an entirely different matter, and I don't think had any bearing on the particular problem before us.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I would like to point out in studying the article that the Executive Committee has put out, in Section 16 on page 7, they have provided that the heads of principal departments appointed under this division shall be citizens of the state and shall have resided in the state for at least three years next preceding their appointment. I would like to address a question to the Chairman of considering this provision at that place.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Well, it seems to me that it is at the appropriate place now. The "citizens of the state" was adopted prior to the adoption of "seven years citizenship of the United States", and after considering, as we have, the insertion of those words and hearing the arguments against the insertion of those words, I think they should be removed and possibly right at this time is the best time to do so.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: The language of the Federal Constitution is brief and clear on this subject, and I think makes it unnecessary to have Mr. Robertson's amendment in the article. It says in the Fourteenth Amendment, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside."

PRESIDENT EGAN: Mr. McCutcheon.

McCUTCHEON: Mr. President, the only question that arises in my mind when we do attain statehood is, is there some fashion devised in some of the documents that are under consideration or will be under consideration wherein our residence in the Territory of Alaska carries over into residency of the state? If it is written up here that he must be a resident of the state, obviously we could not have any government until everybody had been here for three or five or seven years. The question is, in my mind, should we be a resident of Alaska to make it clear? Or is there a legal device in this constitution that will make a carry-over of residency into statehood?

BUCKALEW: The transitional measures will take care of that residence question.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: I would like to call the delegates' attention to the fact that when I first offered this amendment I was going to insert it right after the words "shall be", and then Mrs. Nordale and Mr. Rivers asked me to put it in its present place, which I did, and my idea was not to make it citizen of the state for seven years, but to have him as citizen of this state. Now I submit to you, despite what the Constitution of the United States says, and I recognize its authority and its correctness, that you can be a resident of a state without being a citizen of that state and unless you have some qualifying language, modifying language of the word "governor", a person can become governor of Alaska under this section who is not a citizen of the State of Alaska.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. Chairman, we originally included the word "citizen" as one of the qualifications for judges in the judiciary article as a requirement that he be a state citizen. I agree substantially with everyone in the place who has spoken on the subject of citizenship and to support Mr. Robertson among others, I will quote after the adoption of the Fourteenth Amendment they had cases that say, "The term 'citizen' is distinguishable from 'residence' or 'inhabitant'. One may be a citizen of a state without being an inhabitant or an inhabitant without being a citizen." They cite Travis against Yale and Towne Manufacturing Company, 252 US 60, which was decided long after the Fourteenth Amendment. Frankly, I am now in agreement with Mr. Rivers that if we put it in there now we will thoroughly

and thoroughly confuse because the word "citizen" and "citizenship", however, usually include the idea of "domicile". We are running around in a circle for the sake of clarity, and to save confusion, I recommend very strenuously, since there is so much debate and so much confusion, the words "citizen of the state" be stricken from the article.

PRESIDENT EGAN: We have before us the proposed amendment that has been offered by Mr. Robertson yesterday, and the question is, "Shall the proposed amendment as offered by Mr. Robertson be adopted by the Convention?" All those in favor of the adopting of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. Johnson.

JOHNSON: Is this section still open for amendment?

PRESIDENT EGAN: At the present time we had reached Section 6. We will come back to that. Are there other amendments to Section 6?

HELLENTHAL: I have an amendment to Section 6.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to Section 6 as offered by Mr. Hellenthal.

CHIEF CLERK: "Line 20, strike everything after 'nor' through 'state' on line 4, page 3, and substitute the following: 'He shall be appointed by the governor.' And on line 5 insert 'administrative' before 'duties'. Section 7, line 12, page 3, delete the words 'person elected'."

PRESIDENT EGAN: What is your pleasure, Mr. Hellenthal?

HELLENTHAL: I ask that the Secretary read Section 6 as it would read if this amendment is adopted. I move the adoption of the amendment.

PRESIDENT EGAN: Is there a second?

MARSTON: I second the motion.

PRESIDENT EGAN: The Chief Clerk may read the section as it would read if Mr. Hellenthal's proposed amendment were adopted.

CHIEF CLERK: "There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. The secretary of state shall perform such administrative duties as may be prescribed by law and as may be delegated to him by the governor." And then down in Section 7 take out the words "person elected" on line 12.

PRESIDENT EGAN: The motion is open for discussion. Mr. McCutcheon.

McCUTCHEON: Point of order, Mr. President. As a matter of fact, he is seeking to amend two sections at the same time with one amendment. I have no objection; it is just a matter that I want to be sure we are not going to establish a precedent here by amending the whole article at one time.

PRESIDENT EGAN: It is an amendment that directly relates to this particular question, Mr. McCutcheon.

McCUTCHEON: I will yield.

PRESIDENT EGAN: Mr. Barr.

BARR: I thought maybe somebody wanted to talk on this. I don't particularly.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Hellenthal be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye"; all opposed, by saying "no". The "noes" have it and the proposed amendment has failed of adoption. There again the Chair noted that very few people voted; I mean the number that could have voted even in adopting the proposed amendment, while it was in the majority, it was easy to tell that lots of people did not vote at all. Are there other amendments to Section 6? Mr. Sundborg.

SUNDBORG: Mr. President, just on that point, I wonder, is it not the duty of every person to vote on every question whether it is a voice or roll call vote?

PRESIDENT EGAN: That is right, Mr. Sundborg. It is the duty of every delegate to vote on the voice vote same as a roll call. Mr. Kilcher.

KILCHER: Are we going to question Section 7 now?

PRESIDENT EGAN: If there are no other amendments to Section 6.

KILCHER: I just wonder whether Section 6 as it stands now is expressing what I understand to be the intent of the majority of the delegates. I for one am not seeing the issue clearly. I think we lost a lot of time and accomplished little this morning and last night. I don't know if that could be achieved.

GRAY: Point of order. What is the discussion before the floor?

PRESIDENT EGAN: There is nothing before the house. Mr. Kilcher.

KILCHER: Question of the Chair, if I so may. Since the next sections are tied in somewhat with Section 6, I think we should now frankly consider if any amendments are necessary. I have none.

PRESIDENT EGAN: You mean to make these other sections conform with Section 6 as they now read?

KILCHER: Yes, and to make the intent that has been generally expressed here implemented. I am frankly confused.

HELLENTHAL: Point of information. Could Section 6 as it now reads be slowly read to us so we can take it down? Could you read it slowly so I could take it down?

CHIEF CLERK: That is right there in the copy.

HELLENTHAL: My copy is so butchered up I have no place for insertions.

CHIEF CLERK: "There shall be a secretary of state who shall have the same qualifications as the governor. New material. "He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor and the procedure prescribed by law." Delete the word "election". "The procedure prescribed by law for general elections shall provide that the electors in casting their vote for governor shall also be deemed to be casting their vote for the candidate for secretary of state shown on the ballot as running jointly with the respective candidate for governor. The candidate for secretary of state who runs jointly with the successful candidate for governor shall be elected secretary of state. The secretary of state shall perform such duties as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: The Chair feels that the question that was asked by Mr. Kilcher was, are there any other necessary amendments to the following sections in order to make them conform completely with Section 6 as it is now written. Is that right?

KILCHER: Yes, Mr. President. Is this the first time we are going over this? Are you going over it again?

PRESIDENT EGAN: We will attempt to go over it once more. Mr. Cooper.

COOPER: In Section 7, starting on line 15, "In case of a vacancy in the office of governor because of his death, resignation, impeachment, or removal..." -- there is no mention made of temporary absence.

BARR: Point of order. I believe our usual procedure is to have the chairman of the committee explain the section. I know in this case it would answer Mr. Cooper's objections.

COOPER: I was just going to get to that. There was just one more thing I wanted to add to it. It was discussed yesterday and you asked if there were other amendments. Nobody got to their feet. Temporary absence should be covered in this section.

BARR: Look at line 19. If we could have the Chairman explain this Mr. Cooper would have his objections answered.

PRESIDENT EGAN: Of course, the Chairman has explained the whole proposal.

COOPER: May I have the floor on a point of personal privilege for one minute?

PRESIDENT EGAN: If there is no objection, Mr. Cooper.

(Mr. Cooper spoke on a matter of personal privilege at this time.)

COOPER: My reason for bringing this up is it states that the emoluments of the office of governor shall devolve upon the person elected secretary of state. He will get a higher rate of pay for serving during a temporary absence?

V. RIVERS: We discussed this yesterday and if you will notice in line 20, it says, "the powers and duties shall devolve upon the secretary of state. I believe it was Delegate Gray that made the suggestion that those words be changed: "Secretary of state shall become acting governor." That is only in case of temporary absence. That would cover your doubt, would it not?

COOPER: Yes, sir.

V. RIVERS: I was just drafting that amendment at this time to submit to the body. We talked this over at some length in Com-

mittee, and as I explained yesterday, I thought the words, "powers and duties" covered it. I see no objection to specifically stating that, "The secretary of state shall become acting governor", and I think I speak for the whole Committee when I say that I do not believe they would object to the wording either. It was your suggestion, was it not, Mr. Gray, along the same line as Mr. Cooper is speaking?

PRESIDENT EGAN: You have such an amendment to offer at this time, Mr. Cooper? Mr. Rivers?

V. RIVERS: I have it written out except for a couple of words.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: May I ask a question? Line 17, the word "impeachment" appears. Is conviction on impeachment, is that the same thing? Is impeachment only the process of leading toward conviction?

PRESIDENT EGAN: Mr. Rivers, do you have the answer on that?

V. RIVERS: I think I do. The actual act of impeachment is the actual removal from office. The motion for impeachment is brought and the hearing is had, and the impeachment itself, as I understand it, constitutes the actual completion of the process. There might be others who would care to add to that or differ from my interpretation.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: It looks to me that this matter is taken care of as clearly as it possibly could be.

PRESIDENT EGAN: We have a proposed amendment here, or is this on this question of impeachment?

TAYLOR: Yes, on this particular question. Because in the sentence it says, "In case of vacancy in the office of governor because of his death, resignation, impeachment, or removal, his powers, duties and emoluments shall devolve upon the secretary of state." Now each one, in each instance there, that vacating the office of governor is permanent. He certainly can't come back from death or resignation or impeachment or removal, but it was necessary to put in line 19 in case of temporary absence of the governor from the office the powers and duties only devolve upon the secretary of state during that temporary absence. He doesn't get the emoluments of the office which is the salary. He only performs the duties, he has the power to perform the

duties of the governor until he returns. That had to be stated that way because there is a difference. In one case he is coming back shortly, in the other case he is going away permanently.

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment as offered by Mr. Victor Rivers.

CHIEF CLERK: "Page 3, Section 7, lines 20 and 21, after the first word 'the' strike the words 'powers and duties shall devolve upon the secretary of state' and insert in lieu thereof 'secretary of state shall become the acting governor'."

V. RIVERS: I think, as I stated before, the Committee recommendation, "the powers and duties shall devolve upon", without mentioning the emoluments, and it states specifically what the secretary of state would become in the absence of the governor. I don't know whether the term "acting governor" would imply that by acting he should receive the emoluments or not. That is why we did not adopt that phraseology in the Committee. After further discussion, I feel that myself and many of the Committee members will desire to decide as to which wording is the more suitable.

PRESIDENT EGAN: Do you move the adoption of the proposed amendment, Mr. Rivers?

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Is there a second?

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Now that there is something before the Convention, I would like to say that in other places here that in cases of death or the impeachment, or resignation of the governor, the secretary of state becomes the governor, not the acting governor. So he becomes the governor then, and that is why he is named as a successor of the governor in those particular cases, but for temporary absence he is not. I think that the amendment should be voted down and this should be left just exactly as it is because I think it expresses the sentiment of the Committee.

BARR: Could we have the amendment read, please?

PRESIDENT EGAN: Would the Chief Clerk read the proposed amendment?

CHIEF CLERK: "Page 3, Section 7, lines 20 and 21, after the first word 'the' strike the words 'powers and duties shall devolve upon the secretary of state' and insert in lieu thereof 'secretary of state shall become the acting governor'."

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I have an amendment to the amendment which I could submit orally. One line 17, after the word "removal", delete the rest of the sentence and substitute the following: "The secretary of state shall become the governor."

PRESIDENT EGAN: As an amendment to the amendment?

R. RIVERS: That adds a little wording at the same point in the article.

PRESIDENT EGAN: But it is on a different matter, Mr. Rivers.

R. RIVERS: Then, Mr. President, I will assure Mr. Taylor and others interested that if the present amendment passes I will offer this amendment.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers be adopted by the Convention?" All those in favor of the adoption of the amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll. Mr. Buckalew.

BUCKALEW: Mr. President, may I ask one question. Is this a committee amendment?

V. RIVERS: This is submitted by the Committee only at request of delegates who feel it might clarify the wording. The Committee members should reserve their right on this in regard to their vote, because certainly we felt in bringing it out originally that the wording covered it. It is hard to interpret which is the better wording and so for that reason it is not necessarily endorsed by all of the Committee. They have the privilege of their own stand on it.

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

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

Yeas: 29 - Armstrong, Awes, Buckalew, Coghill, Collins, Cross, Davis, V. Fischer, Gray, Hellenthal,

Hermann, Kilcher, Knight, Lee, Londborg, McLaughlin, McNealy, McNees, Metcalf, Peratrovich, Reader, Riley, R. Rivers, Rosswog, Stewart, Sundborg, VanderLeest, Walsh, Mr. President.

Nays: 24 - Barr, Boswell, Cooper, Doogan, Emberg, H. Fischer, Harris, Hinckel, Hurley, Johnson, King, Laws, McCutcheon, Marston, Nerland, Nolan, Nordale, Poulsen, V. Rivers, Robertson, Smith, Sweeney, Taylor, Wien.

Absent: 2 - Hilscher, White.)

CHIEF CLERK: 29 yeas, 24 nays, and 2 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Mr. Ralph Rivers.

R. RIVERS: I have an amendment to offer.

NORDALE: May I have the privilege of the floor for a few minutes?

PRESIDENT EGAN: If there is no objection.

(Mrs. Nordale spoke on a matter of personal privilege.)

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Ralph Rivers.

CHIEF CLERK: "Section 7, line 17, after the word 'removal' delete the rest of the sentence and substitute the words 'the secretary of state shall become the governor'."

R. RIVERS: Mr. President, I move the adoption of that amendment.

PRESIDENT EGAN: Mr. Ralph Rivers moves the adoption of the amendment.

TAYLOR: I ask unanimous consent.

POULSEN: I object.

PRESIDENT EGAN: Objection is heard.

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Just briefly, it would read as follows: "In case of a vacancy in the office of governor because of death, resignation, impeachment or removal, the secretary of state shall become the governor." I think it is clear and simpler than to say, "The governor's powers, duties and emoluments shall devolve upon the secretary of state." I think we might as well say that he shall become the governor so I put it this way.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I am beginning to agree with Mrs. Nordale. On the last amendment I voted "yes" because I thought it was the wish of the Committee. Now, if we amend this, going back to an original question asked by Mr. Cooper, the word "impeachment" literally translated means the institution of any charges. If anybody institutes any charges in the legislature under Mr. Rivers' amendment, then automatically the governor is out of office, and the secretary of state succeeds.

R. RIVERS: Will you yield a moment?

McLAUGHLIN: Yes.

R. RIVERS: It is merely to a fact that that sentence says "vacancy caused by impeachment", so there is no vacancy if the impeachment charges don't carry. Therefore, we are not in conflict.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: A question, Mr. Rivers, if I may. If impeachment charges are upheld, does that not mean removal automatically? Could we not just leave the impeachment?

R. RIVERS: Right. A vacancy would be caused only if the impeachment is upheld, and the mere institution of the impeachment proceedings does not cause a vacancy, so we are not in conflict here. This is perfectly all right.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I just looked in the big book back here to ascertain what "impeachment" meant. I thought I knew what it meant, too. It says in part: "Calling before a proper tribunal for high crime." Now I agree with Mr. McLaughlin 100 per cent. He has exactly the same thing. Impeachment, if there is a proceeding instituted, it means in this case that the governor is out whether it carries or not. It is the actual trial of the matter, whether it carries or not.

McLAUGHLIN: Mr. Chairman, this is a littler book than he looked in, but "Impeachment of the governor", within the meaning of Section 16, Article VI of the Constitution, this is referring, I presume, to Oklahoma, "is the adoption of the articles of impeachment by the house of representatives, a criminal proceeding against a public office before a quasi-political court, instituted by a written accusation called 'articles of impeachment'." For example, a written accusation by the House of Representatives of the United States to the Senate of the United States against an officer, that is, the impeachment is the proceeding and not the conclusion, so literally under the interpretation of impeachment it means that you made the charges and he is automatically dismissed without a proceeding or a finding. That is why I recommend not changing the well-thought-out considerations of the Committee.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: The interpretation I gave on impeachment I based on impeachment proceedings in the United States Congress against President Johnson. Impeachment proceedings were instituted but he was not impeached. If there are different interpretations to the word, then I will certainly withdraw my interpretation because I am not adequately prepared to decide at this time whether or not the word "impeachment means the institution of the proceedings or the actual completion of the proceedings. I would like very much to have it clarified.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I want to ask Mr. McLaughlin if the institution of an impeachment proceedings would automatically cause a vacancy in the office of governor?

McLAUGHLIN: No. Under the interpretation here where we have impeachment or removal, the removal would seem to indicate that that is something that follows impeachment or results in a removal, but impeachment as such automatically the institution of charges would remove the governor under some interpretations.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I can't follow Mr. McLaughlin's interpretation of the word "impeachment". We are not acting upon impeachment here. We are acting upon the vacancy caused by the impeachment. If you carry impeachment out to its logical end, its removal, he is removed by impeachment. The vacancy is caused by impeachment. It is the whole proceedings, when you use the word "impeachment", that lead to the vacancy in the office, the

permanent vacancy, that the impeachment was upheld. It looks to me like it is kind of pontificating upon the obvious in this particular matter.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 16 - Armstrong, Collins, Cooper, Davis, Kilcher, Laws, McNealy, Metcalf, Nerland, Nordale, Peratrovich, R. Rivers, Sundborg, Taylor. Walsh, Mr. President.

Nays: 37 - Awes, Barr, Boswell, Buckalew, Coghill, Cross, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nolan, Poulsen, Reader, Riley, V. Rivers, R. Robertson, Rosswog, Smith, Stewart, Sweeney, VanderLeest, Wien.

Absent: 2 - V. Fischer, White.)

CHIEF CLERK: 16 yeas, 37 nays and 2 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment has failed of adoption. Mr. Ralph Rivers.

R. RIVERS: Mr. President, I now ask for a minute on the privilege of the floor.

PRESIDENT EGAN: If there is no objection, Mr. Rivers, you have the floor on the question of privilege.

(Mr. Ralph Rivers spoke on the question of privilege.)

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I will try and answer the question in this manner, that it was the understanding as I interpreted the wishes of the Committee that his title, powers, duties and emoluments would succeed to the secretary of state. I don't believe that there was any controversy or dissension in the Committee on that point. As a matter of clarification of wording, I would say that the title was one of the implied things that would carry along with

the title, powers, duties and emoluments.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I objected and voted against the amendment for the identical purpose in accordance with Mrs. Nordale's wishes that we wanted to have it transferred to Style and Drafting.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I am a member of Style and Drafting and I am worried about this sort of thing. The section as it was clearly in my opinion stated the intent of the Committee. I think the amendment, either of the amendments offered, were totally unnecessary. Since they were offered, if they were adopted, that was fine and dandy, but if the amendments are offered and voted down as the last one was, I am fearful that Style and Drafting may not carry out the intent of the body by using that language because the body has voted it down. I think we should be careful about offering amendments where they are not necessary, where Style and Drafting can, in shorter language possibly or clearer language, state the intention of the body. I don't think we should offer amendments, but if they are offered, I think we should vote for them because we are tying the hands of Style and Drafting to take care of the matter.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I think I might be able to clarify this. Follow the first part of Section 7 and this follows the thoughts as we had them in the Committee: "In case the governor-elect shall die", this is before that person takes office or in case he fails to qualify, "the powers, duties, and emoluments of the office of governor shall devolve upon the person elected secretary of state", and reading on down, "for the term which the governor-elect was elected." Now in that particular place we did not want to say he would become governor because then it would mean he would become governor in place of the one that was still filling out the remainder of his term. That applied to the governor-elect, and it might be that we carried that same language on into the second sentence. Now in that line I would say Style and Drafting could --

JOHNSON: Point of order. I don't believe there is anything before us. I therefore move we stand at recess until 1:30.

PRESIDENT EGAN: Mr. Johnson moves that the Convention stand at recess until 1:30. Are there committee announcements? Mr. McNealy.

2167

McNEALY: Meeting of Ordinance Committee. I would like to have all members present in the gallery immediately following the recess.

PRESIDENT EGAN: A meeting of the Ordinance Committee in the gallery immediately following the recess. Mr. Victor Rivers.

V. RIVERS: There will be a meeting of the Executive Committee at 12:45 to hear any of the delegates at that time.

PRESIDENT EGAN: A meeting of the Executive Committee at 12:45 to hear any of the delegates who wish to be heard at that time. Mr. Smith.

SMITH: Mr. President, I would like to announce that the Resources Committee will meet in the lobby of the Northward Building tomorrow at 2 o'clock instead of in the Polaris Building as previously announced. It is merely a change of locality.

PRESIDENT EGAN: The Resources Committee will meet tomorrow in the lobby of the Northward Building at 2 o'clock. Mr. Sundborg.

SUNDBORG: Style and Drafting Committee will meet at 1 o'clock tomorrow afternoon at room 1013 of the Polaris Building.

PRESIDENT EGAN: The Style and Drafting Committee will meet at 1 o'clock tomorrow afternoon in room 1013 of the Polaris Building.

SWEENEY: Engrossment and Enrollment at 1 o'clock today.

RILEY: Mr. President, a one-minute meeting of Rules immediately upon recess.

COGHILL: Mr. President, your Committee on Administration would like to have the intent of the Convention as to their adjournment time this afternoon so as to notify the food service and also find out whether we could have our meeting. We would like to have a meeting this afternoon and I would call it for the 3 o'clock recess, but we might recess at that time for the weekend.

PRESIDENT EGAN: Does the Convention know its intention at this time? Mr. McNees.

McNEES: Is there any reason why we should not work through until 9:30 as we have been doing?

COGHILL: Could we have a show of hands for 3:45?

PRESIDENT EGAN: A show of hands as to the 3:45 time? Without counting hands it seems evident that the Convention will adjourn at 3:45 this afternoon.

COGHILL: I would like to announce a meeting of the Committee on Administration at 1:00 p.m.

NERLAND: The Finance Committee will meet at 12:30 tomorrow afternoon.

PRESIDENT EGAN: If there is nothing else the Convention will stand at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. The President would like to inform the delegates that the stenotypist is ill this afternoon and will take the information off the tapes at a later time. Do we have a pending amendment? Mrs. Sweeney?

SWEENEY: Mr. President, may I revert to committee reports?

PRESIDENT EGAN: If there is no objection, the Convention will revert to committee reports at this time. Mrs. Sweeney.

SWEENEY: Mr. President, your Committee on Engrossment and Enrollment to whom was referred Committee Proposal No. 5 has compared it with the original and finds it correctly engrossed and the enrolled copy will be placed on the desks of the delegates this afternoon. There is one typographical error in the mimeographed enrolled copy which you will receive, and it is just a matter on page 4, line 14, changing the "house" of the legislature, should be the "houses". That is the only error and I think it is not too bad. I move and ask unanimous consent for the adoption of the report.

PRESIDENT EGAN: Mrs. Sweeney moves and asks unanimous consent for the adoption of the report of the Committee on Engrossment and Enrollment with relation to Committee Proposal No. 5. Is there objection? Hearing no objection, the report is ordered adopted and Committee Proposal No. 5 is referred to the Style and Drafting Committee. Is there pending amendment to Committee Proposal No. 10a?

V. RIVERS: I have a couple of minor committee amendments to be submitted in just a moment or two.

PRESIDENT EGAN: Do you have them ready, Mr. Rivers?

V. RIVERS: I have some of it ready.

PRESIDENT EGAN: You may submit the proposed amendment. What section?

V. RIVERS: That applies to page 2.

CHIEF CLERK: "Section 5, page 2, line 14, strike the word 'term' and insert in lieu thereof the word 'tenure'."

PRESIDENT EGAN: What is your pleasure, Mr. Rivers?

V. RIVERS: I move and ask unanimous consent that the amendment be adopted. It is a matter of definition of "term" and "tenure" came up and it was discussed and was decided that the term "tenure" was best suited to that use.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Doogan.

DOOGAN: Point of information. Will it change the word "term" to "tenure" throughout the article?

V. RIVERS: No, only in that one particular case.

PRESIDENT EGAN: Is there objection to the adoption of the proposed amendment? If not, the amendment is ordered adopted. Mr. Victor Rivers.

V. RIVERS: I have another amendment.

PRESIDENT EGAN: The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 7, page 3, line 17, strike the word 'impeachment'; after the word 'his' insert the word 'title'."

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: It was felt in Committee that the word "impeachment" was covered by the word "removal" and that it was unnecessary in there and in view of the questionable interpretation of it during discussion, it was decided in Committee to remove it. The insertion of the word "title" was to cover the discussion from the floor this morning in regard to insuring that he had his title conveyed as well as the emoluments. I move and ask unanimous consent.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent --

ROBERTSON: I didn't quite get that where the word "title" comes in.

V. RIVERS: The word "title" comes in between "his" and "powers", line 17. "His title, powers, duties, and emoluments shall devolve..." It clarifies any question as to whether the title succeeds with the office.

PRESIDENT EGAN: Is there any objection to the unanimous consent request for the adoption of the proposed amendment?

V. RIVERS: Excuse me, Mr. President, that should be also inserted on line 11, the word "title", between "the" and "powers".

PRESIDENT EGAN: If there is no objection, that amendment will be included in the original proposed amendment, and if there is no objection, it is so ordered. If there is no objection to the adoption of the proposed amendment, it is ordered adopted. Are there other amendments?

V. RIVERS: I have one other amendment which I will read to you. I haven't got it completely drafted yet, but it is on page 4, line 4, after the word "acting", strike through the word "term" on line 15 and substitute the following: "A vacancy in the office of governor shall be filled as prescribed by law." Now the effect of this amendment is to wipe out the order of succession as established here after the secretary of state has become governor and allow it to be prescribed by the legislature. In Committee it was unanimous that that was agreeable.

PRESIDENT EGAN: That would include the insertion of a period after the word "acting"?

V. RIVERS: No, I believe the period would be stricken and the sentence would just be continued. It would read this way then, "If for any reason the secretary of state is incapable of acting, a vacancy in the office of governor shall be filled as prescribed by law." The line down at the bottom of that paragraph, "No election of a secretary of state shall be had in any event except at the time of electing a governor...", that would remain in. I will move and ask unanimous consent, Mr. President.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent for the adoption of the proposed amendment. Is there objection? Hearing no objection, the proposed amendment is ordered adopted. Are there other amendments?

V. RIVERS: There is one other amendment, Mr. President. On page 7, line 18, Section 16, place a period after the word "governor"; strike down to "successors" on line 20. That line would then read: "Such single executive shall be nominated and appointed by the governor, with the advice and consent of the

legislature, and shall serve at the pleasure of the governor." I move and ask unanimous consent for the adoption of that amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent that the proposed amendment be adopted. Is there objection? Mrs. Sweeney?

SWEENEY: There seems to be a little confusion. I'm not clear that what he told us is actually what he means. On line 17, you change the word "senate" to "legislature"?

V. RIVERS: That was changed in a previous amendment. I asked that in an amendment yesterday morning, I believe. I named a number of them and have them marked on mine. We had referred to "confirmation by the senate".

PRESIDENT EGAN: If there is no objection, the Convention will be at recess for three minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Rivers.

V. RIVERS: Mr. President, with the cooperation of the Chief Clerk, we now have the amendment in the form that I desire to present it. I would now like to ask the Chief Clerk to read the amendment.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Section 16, page 7, line 17, delete 'senate' and insert 'legislature in joint session'. Line 18, strike from the word 'governor' through 'successors' on line 20."

PRESIDENT EGAN: If there is no objection. Mr. Rivers, first the Chair will ask unanimous consent that the original proposed amendment that we did not act upon, be withdrawn. If there is no objection, it is so ordered. Mr. Victor Rivers.

V. RIVERS: I ask unanimous consent and move the adoption of this amendment. This is a committee amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent for the adoption of the proposed amendment. Mr. Johnson.

JOHNSON: I object to the striking of the word "senate" and including the word "legislature in joint session".

PRESIDENT EGAN: Is there a second to the motion?

R. RIVERS: I'll second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers seconds the motion.

V. RIVERS: I might explain that. This section in its present printed form, was set up prior to the adoption of the legislative section so now in order to make it conform to the legislative section we have to change the confirmation of appointees by the senate to appointees by the houses of the legislature in joint session, so that would make it in uniformity with what we previously adopted, Mr. Johnson. That is our problem, to make it uniform with the legislative proposal that was adopted.

JOHNSON: I still object. I believe we have adopted a bicameral legislature and we ought to operate as one.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by the Committee be adopted by the Convention?" All those in favor of adopting the proposed amendment will signify by saying "aye". All opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments? Mr. Robertson.

ROBERTSON: I didn't get the part he struck.

PRESIDENT EGAN: Will the Chief Clerk please read the amendment that we have just adopted. Read the section as it will read with the amendment in it.

CHIEF CLERK: "Section 16. The head of each principal department shall be a single executive, unless otherwise provided by law. Such single executive shall be nominated and appointed by the governor, with the advice and consent of the legislature in joint session, and shall serve at the pleasure of the governor, except as herein otherwise provided with respect to the secretary of state."

PRESIDENT EGAN: Are there other amendments to the section? Mr. Victor Rivers.

V. RIVERS: Mr. President, I might add, before we close the committee reports, that there are three or four places in this proposal where we must change the word "senate" to "legislature in joint session". I will submit that at a later time so that we make this in uniformity with the legislative proposal we adopted.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, while we are discussing Section 16, I have an amendment to Section 16.

PRESIDENT EGAN: Mr. Buckalew, we hadn't yet really come to Section 16 except that the Committee was offering these changes in an attempt to make it conform, but you will have an opportunity to offer your amendment. Are there amendments to Section 7? Section 8? Section 9? Mr. Davis.

DAVIS: Mr. President, may I ask Mr. Rivers a question?

PRESIDENT EGAN: You may ask your question, Mr. Davis.

DAVIS: In line 20, page 4, Section 9, it provides that, "The salary of the governor shall not be diminished during his term of office." In the judicial article we adopted a somewhat similar provision in which we have said the salaries should not be diminished during the term in office except on a general decrease as to all state officers. I am wondering if it was the intention of the Committee to make a difference in that respect as far as the governor is concerned. Now I have talked with some of the Committee and they said it was your intention to make the governor different in that respect from what we had adopted in the judicial article. I just want to know.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Yes, Mr. President, the Committee was unanimously of the accord that if the governor ran for and was elected to office for a term of office that his salary that was established at the time he ran for that office should not be diminished during that term of office, so if they desire to decrease the salary, the legislature would necessarily have to make it effective at the end of some one term.

PRESIDENT EGAN: Are there amendments to Section 9? If not, are there amendments to Section 10? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment to Section 10.

PRESIDENT EGAN: You may submit your amendment, Mr. Sundborg. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 10, page 5, strike lines 16 through 20."

BUCKALEW: I move the adoption of the proposed amendment.

SUNDBORG: I second the motion.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment, seconded by Mr. Sundborg. Mr. Buckalew.

BUCKALEW: I had the identical amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I think this amendment speaks for itself. This is a paragraph which may have some merit. I am not sure that it does, but if it does, it can always be provided for by the legislature and at this point I might read to you, for laughs, something we did here early in the session, where we adopted a resolution saying, "It is the intent of this Convention that the constitution should be a document of fundamental principles of basic government and contain the framework for state government." This is a minor provision which I think could well be taken care of sometime in the future and not in the constitution.

PRESIDENT EGAN: Miss Awes.

AWES: I agree with Mr. Sundborg that it would be better taken care of by the legislature than by the constitution. Now I'm not sure if I were in the legislature that I would approve such a law either because I don't think it means much. Here you have a governor who is going out of office; if his successor is someone he is glad to see, perhaps someone in his own party, he will cooperate and give him this information anyhow. If it is someone he doesn't want to cooperate with, I don't think there is any way you could make this effective. You might mandamus him, but by the time you got through your legal proceedings, he would be out of the office and the new governor would know what he had to know, anyhow, or he could write a report which was slanted in such a way that it might be more harmful than helpful, so I just don't think it's a good provision.

MARSTON: Question.

PRESIDENT EGAN: Mr. Barr.

BARR: I do believe that this is fairly important. It could be left up to the legislature, but about 50 per cent of our other proposals in here could be left up to the legislature, also. It was expressly written so no harm would come from it. This report is written and it is to be submitted to the incoming governor. It's true that the governor could just fail to do so but what man in public life would violate a constitutional law? He would be dead as far as a political career is concerned after that. I think it's just a safeguard and that is what the constitution is, a safeguard, and this is one of them.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, I think this superfluous for another reason and that is if there has been a change in the governor's office, why the governor-elect will probably have been telling the predecessor all about the conduct of his administration throughout the campaign. (Laughter)

PRESIDENT EGAN: The Convention will come to order. The question is, "Shall the proposed amendment as offered by Mr. Sundborg be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 10? If not, are there amendments to Section 11? Mr. Cooper.

COOPER: Mr. President, I asked yesterday about the armed forces after they have been called into the United States. I don't believe I had the exact question. This states that, "The governor shall be commander in chief of the armed forces of the state." There is a little doubt in my mind and I would like to have it explained a little further.

PRESIDENT EGAN: Could someone explain this? Mr. Victor Rivers?

V. RIVERS: I will repeat what I said yesterday. Once they are called into the service of the United States, they are no longer the forces of the state, and he would naturally be superseded by the commander of the theater in which they were active. We felt in the Committee that this language covered the cases where they were called into active combat under the national government.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I believe that is unquestionably an accurate statement of the facts. Under Section 8 of the Constitution of the United States, this is granting to the Congress: "To provide for organizing, arming and disciplining, the Militia," that is the state militia, "and for governing such part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers and the Authority of training the Militia according to the discipline prescribed by Congress." They have the authority once they're called into service. They are lost to the state.

PRESIDENT EGAN: Are there amendments to Section 12? Mr. Armstrong.

ARMSTRONG: Mr. President, I take it that in Section 11 that the Committee is leaving up to Style and Drafting the title in the margin. There is no title.

PRESIDENT EGAN: That is evidently the case, Mr. Armstrong.

V. RIVERS: That will be left up to Style and Drafting. I think the title matter could well be and should be the subject matter for the Style and Drafting. It was an omission which I note, and I know it's been marked in. The original draft of our article has the titles on those paragraphs, I believe.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, the Style and Drafting Committee would appreciate very much the opportunity to write some small part of the constitution. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Are there amendments to Section 12? Mr. Fischer.

V. FISCHER: I have a question. If we, in line with the procedure to be consistent, on page 6, line 2, change "senate" to read "legislature", has that been done?

V. RIVERS: No.

V. FISCHER: Has it been sent to the Committee to alter that?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: There are three or four places, as I mentioned to you, that were set up before the legislative article was adopted, in which I will cover all of them with Committee amendments asking that they be changed, where they are in conflict with what we have adopted.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, I would like to rise to a point of personal privilege.

PRESIDENT EGAN: Your point of personal privilege.

(Mr. Londborg spoke on a point of personal privilege.)

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: You do not yet have the engrossed copy of the article on the legislative, but if my memory serves me, the confirmation of the appointive offices of the state would be made by the houses of the legislature in joint session. Now it may be that I am wrong on that, but I thought that was adopted in the legislative section.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I wish to confirm what Delegate Londborg says. I have the engrossed copy before me and I withdrew it at the time the statement was made. The vote was taken on "the legislature in joint session". I cannot find it in the legislative article. I think it would have had a bearing on the vote.

SUNDBORG: Mr. President, I believe the Convention did take action on this. They took it in the judiciary article at the place where it provided for confirmation by the legislature of the appointment of the lay members to the judicial council, and at that time I had thought that we were settling the issue of how confirmations should be voted upon by the legislature, but, of course, every time it comes up, I suppose it can be argued over again.

PRESIDENT EGAN: This seems to be a situation where we should have a little recess and different people could get together and decide just what this amounts to. The Convention will stand at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Rivers.

V. RIVERS: Mr. President, in checking with the Chief Clerk, it was my impression that yesterday I had made a unanimous consent request. However, it appears that that was not so. The records do not show that I had made the unanimous consent request to put these confirmations by the senate into conformity with what I had understood was adopted for the legislative article. I made this statement yesterday that conformity would be the approval of appointments by joint session of the legislature. Now it could be handled as we come to each one that we change it or we could make a motion here, I could make a motion here asking that the body go on record unanimously as to what method they desire to approve in confirming appointments. In that way, we could get this into conformity with the opinion of the body and of other sections. I would be glad to make the motion if that is the way you prefer to approach it, or we could approach it by each individual item as we come to it.

PRESIDENT EGAN: It seems to the Chair that at this time the body should make a definite decision on the question and a motion should settle the question once and for all in our different articles. Mr. Victor Rivers.

V. RIVERS: Speaking yet, without a motion on the floor, for the Committee, the Committee decided after the discussion in the judicial article in which the confirmation was by joint session that we would, as a Committee group, go along unanimously with the approval of confirmations by joint sessions of the legislature, so I will move and ask unanimous consent that this group express as a policy the intent that approval of appointments shall be confirmed by legislatures in joint session and that we will correct our proposals to conform to that policy.

RILEY: I'll second the motion.

PRESIDENT EGAN: Mr. Rivers moves, Mr. Riley seconds the motion. Mr. Victor Rivers.

V. RIVERS: I'll speak briefly on this motion. I might just say that the policy of confirmation by both houses in joint session is the present method by which we now confirm appointees to the various Territorial positions. It has been used for a number of years.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, this only applies to cases where provision is now made for confirmation by the house or the senate, period. It does not apply to all officers.

V. RIVERS: It does not apply to all officers. There is a paragraph in here that I might call your attention to. That is Section 18, where the governor fills vacancies. Now we don't know but what sometime there may come up a law which the legislature enacts that in the matter of filling vacancies they may be or may not be required to be confirmed by either or both houses, so it was our intent in that case on line 13 where it says, "...by the governor with the advice and consent of the senate or...". We were going to strike "of the senate or" and "with the advice and consent of either house". That would be the only exception where there is a possibility that the law would be enacted providing approval by one house, it's a matter of filling vacancies.

HELLENTHAL: Question. Do you realize we have set up the article on the composition of the advisory board on districting and those people are appointed by the governor. Now is it the intention that there be language superimposed there, by and with the consent of the joint houses assembled, or is this only to apply where in the present language the consent of one or the other body is required?

V. RIVERS: Yes, that is the intent. It reads this way: "The governor may fill any vacancy occurring in any office during a

recess of the legislature, appointment to which is made by the governor with the advice and consent of..." We would have it "of either house of the legislature".

HELLENTHAL: Then it would not apply to the redistricting board?

V. RIVERS: It would not apply to the redistricting board.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Well, I perceive it is a little bit useless for me to argue this point too much. However, I am convinced that we are being slightly paradoxical because we have already declared ourselves firmly in favor of a bicameral legislature and yet in the legislative article we diluted that by saying that vetoes of the governor shall be acted on in joint session instead of by each house separately. Now when this executive article first came out it contained almost uniformly the provision that appointments were to be made by the governor with the advice and consent of the senate, something that occurred to me as being extremely good. I believe firmly that we should have a strong executive and there has been a great deal of argument around here about expense. If under this article the governor can call the senate back into session, there is no reason why appointments couldn't be acted upon when he did so. However, now if appointments are to be acted on in that manner, he must call together both houses of the legislature and have them in joint session, and I disagree that the apportionment board or redistricting board, or whatever you call it, would not be covered by this language because, as I understand it, we are now adopting a general policy to cover all appointments in the future or present, and if we do that, then it will certainly cover the matter that Mr. Hellenenthal raised. At least I can't see why that should be excepted from the general provisions. I am certainly against this type of amendment. I am against this type of procedure. I thought we were proceeding along the line of ultimately adopting a constitution that we would have no trouble in selling to the Congress of the United States and now I am not so sure.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I agree with Mr. Johnson that this is a paradoxical situation; however, having seen this body change its mind several times, I'll say they are at least consistent in changing their minds. I am not in favor of this because I am in favor of a bicameral legislature. It is true that a joint session has been our method of confirming appointments, but I have never agreed with it because I have been there, seen

it operate, and it operates more or less as a rubber stamp, except on certain occasions, because a great many of these names that are submitted are not known to the majority of the group. However, if this were taken care of by one house or by each house separately, they would have time to consider these names and discuss them. I believe that if we want to stick to our bicameral legislature that is the way it should be done.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, in the original article, as we wrote it, had the word "senate" all the way through and I don't think there was any question until the judicial article went through calling for the joint session. Then I remember we discussed it in Committee and I conceded to the majority on that, not wanting to put in a minority report on such a possible minor thing. In fact, I went along supporting the whole thing, now it has been brought up and I am somewhat undecided which would be the best. I have not yet heard one good argument for joint session other than it has been done in the past here in Alaska. If we are going to do everything the way it has been done in the past, then we had better keep our appointed governor from Washington and a few other things. I would like to hear one good reason why we should run it with both houses.

PRESIDENT EGAN: Mr. Harris.

HARRIS: Mr. President, I would like to give Mr. Londborg one good reason as it was pointed out to me. I think if I recall it to his memory, he will remember why we changed the article. There are going to be several appointive officers under the state. I don't know exactly how many, but there will be quite a few. Our house is going to be 40 members, our senate is going to be 20 members. As I stated once before on the floor, I believe, if you leave it entirely up to the senate to confirm the officers, then the senate is going to get together and say, "Well, if you will appoint this man, I'll help you and you help me, and we'll slice it up like a piece of pie and we'll all get our friends in." That's what we didn't want. We want the governor to make the appointments, not the senate.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, I won't presume to suggest that this is a good argument, a strong argument, but I think it is a reasonable negative argument, and that is, I don't follow the suggestion that by strengthening the senate, you strengthen the executive.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, had it not been one of the senators that spoke on this, I would not have spoken, but on the line of the house of representatives, I just want to call attention to one thing that in my opinion is in favor of both houses recommending on these appointments, and that is this, that your representatives will be elected from 24 representative districts and it may be that one of the governor's appointees may be next door or right in the bailiwick of one of the representatives where he might live at some little distance from one of the senators, and I think it's a certainty that every member of the house of representatives should know one particular appointee, anyone that is appointed from his particular district, every representative would know and would be able to advise and vote intelligently and in that manner assist the senate in this joint confirmation.

PRESIDENT EGAN: Mr. Nolan.

NOLAN: Mr. President, I personally haven't any particular preference whether it is a joint session or not, but I don't follow along where they say that it is necessarily going to help the governor out because the house was elected. I remember not very many years ago, in fact, only a couple of years ago, where the house that was elected was of the opposite party of the governor that was in then and he sent down the names and there wasn't anybody that was confirmed.

PRESIDENT EGAN: Mrs. Fischer.

H. FISCHER: Mr. President, the same thing could happen, in the particular instance where we have the hold-over senators and the new governor was elected and he desired to give his party the appointments, the same thing could happen if it was going to go back to just the senate. The senate could turn down all his appointments.

PRESIDENT EGAN: Mr. McNees.

McNEES: Mr. President, my point that I would like to make is that inasmuch as we have created a strong elected executive and the rest of our elective officials for the new proposed state would be your legislature, meaning both houses, that an appointment by your executive department and a confirmation by your legislature as a total would mean the truest reflection of your entire elective thinking. That is the best logical reason that I can think of for supporting the meeting of the two houses in joint session for approval of appointments.

PRESIDENT EGAN: Mr. Cooper

COOPER: Mr. President. Mr. Hellenthal asked the Committee Chairman a question that if certain boards or commissions were excluded. The answer was given as yes, but in Section 18 it says, "The governor may fill any vacancy occurring in any office during a recess of the legislature...", and Mr. Hellenthal pointed out that the board of apportionment, there might be a vacancy occur and before the governor could have a man seated on that board that could act with any legality whatsoever, both houses would have to be convened to confirm his appointment. Now you have a Legislative Council and it is my thinking that if the senate were to confirm at least some of these minor board members, the Legislative Council could poll the senate without even having to convene them. Certainly you do not want to have to fly 60 members to the state legislature to Juneau to appoint a member to the board of reapportionment.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, the way I read Section 18, it says, "The governor may fill any vacancy occurring in any office during a recess of the legislature, appointment to which is made by the governor with the advice and consent of the senate or of the legislature in joint meeting." This refers to very specific appointments, not to just any old board, and so I don't follow that argument at all.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: Mr. President, you notice that the nonpartisan board of reapportionment does not require confirmation.

COOPER: I know that, but Mr. President, might I have the floor on a point of personal privilege?

PRESIDENT EGAN: If there is no objection, Mr. Cooper, you may have the floor on a point of personal privilege.

(Mr. Cooper then spoke on a point of personal privilege.)

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President. Mr. Cooper and 175,000 other people have a perfect right to be confused, I believe. It was the intent of the Committee to exclude those appointments which did not have to be confirmed by the legislature, but according to the construction of this sentence, it is a little confusing. I would like to call it to the attention of the Style and Drafting Committee and I think they could take care of that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I think that it is clear, but probably not as clear as it could be. I know of two suggestions which will clarify, it beyond any question. The thing should read like this: "The governor may fill any vacancy occurring in an office, appointment to which is made by the governor with the advice and consent of the senate or of the legislature in joint meeting during a recess of the legislature." Now if you put the word "an" in instead of "any", I think Mr. Cooper's objections will be met and it will be clearer.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment, or the proposed motion.

CHIEF CLERK: Mr. Rivers moved and asked unanimous consent that "The group express as a policy the intent that approval of appointments shall be confirmed by the legislature in joint session and we will correct this proposal to conform with the policy." That was the motion.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, after hearing the arguments, it may be that some of the delegates feel it is just too broad a handling of this subject and they may desire to handle it individually. I might say, that in all fairness to all delegates, I feel that if the thought of the body is that it is too broad an approach of policy, then it should be voted down and we handle this individually. I was trying to expedite the matter by making this motion, not to exclude anyone from a fair chance to be heard on each point.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I move and ask to withdraw the motion, Mr. President.

PRESIDENT EGAN: Mr. Victor Rivers has asked unanimous consent to withdraw his proposed motion.

R. RIVERS: I object.

PRESIDENT EGAN: Mr. Ralph Rivers objects.

R. RIVERS: The basis of my objection is that this is a fundamental proposition. We are not going to do it two or three different ways throughout the constitution. If we decide right now which way we will make all the articles conform. We've got it squarely before us which way we want to pursue. I think we just hashed it for 20 minutes, we've almost arrived at something, let's vote on this.

PRESIDENT EGAN: The question is, "Shall the proposed motion be adopted as the policy of the Convention in this matter?" Mr. Hurley.

HURLEY: Mr. President, I haven't been heard on this. If he wants to withdraw it, can't I second the motion?

PRESIDENT EGAN: Yes. Mr. Hurley.

HURLEY: Mr. President, it occurs to me from the wording that has been read to me that Mr. Hellenthal's original question is still a problem, where we provide in this constitution, as we may provide, that the governor shall appoint certain people without concerning ourselves with whether or not they are approved by the senate or house or both houses together. By adopting this thing, it applies to all of them that the governor appoints. If we don't mean that, I think we should stick in there that the governor appoints when such appointment is required.

PRESIDENT EGAN: I'll ask that we have a minute or two recess and try to work out that motion. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Rivers.

V. RIVERS: Mr. President, after discussing this matter, some of the delegates felt that this motion should apply only to Proposal No. 10a, so I am going to again ask unanimous consent to withdraw my motion with the understanding that a similar one will be presented by Delegate Hellenthal.

UNIDENTIFIED DELEGATE: I'll object.

PRESIDENT EGAN: Do you ask unanimous consent for the withdrawal of your motion?

V. RIVERS: Yes, and I'll so move.

DOOGAN: I'll second the motion.

PRESIDENT EGAN: Mr. Victor Rivers moves that he be allowed to withdraw his proposed motion, seconded by Mr. Doogan. The Chair will rule that it takes a majority vote to withdraw it. The question is, "Shall Mr. Victor Rivers be allowed to withdraw his proposed motion?" All those in favor of withdrawing the proposed motion will signify by saying "aye". All opposed by saying "no". The "ayes" have it and the proposed motion is ordered withdrawn. Mr. Hellenthal.

HELLENTHAL: Mr. President, I move that where in this Proposal No. 10a, confirmation of a gubernatorial appointment is required of either or both houses of the legislature or both houses jointly, then in those cases it shall be the policy of this body that such confirmation be made by both houses of the legislature jointly assembled.

PRESIDENT EGAN: Do you so move the adoption?

HELLENTHAL: I so move.

TAYLOR: I second the motion.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed motion.

(The Chief Clerk then read the proposed motion.)

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, just a point of clarification, I would like to address to Mr. Hellenthal. It is my memory that you used the term "it shall be the policy of" with respect to this article before us. Are you proposing a uniform amendment at every point covered by the language in your amendment relating to this article?

HELLENTHAL: I think that it is so proposed in this motion.

RILEY: The word "policy" is all I object to and only momentarily.

HELLENTHAL: I think that word accomplishes the purpose of the uniform amendment.

RILEY: Your motion is that we adopt such language in every such instance? Am I right?

HELLENTHAL: That, I believe, is the clear import of this motion.

RILEY: Thank you.

PRESIDENT EGAN: That refers only to this particular proposal, is that correct?

HELLENTHAL: Yes.

PRESIDENT EGAN: The question is, "Shall the motion as offered by Mr. Hellenthal be adopted as the policy of the Convention with relation to this proposal?" All those in favor of the motion will signify by saying "aye", all opposed by saying "no".

The "ayes" have it and the motion has been adopted. Mr. Hurley.

HURLEY: Mr. President, I would like to ask for the purpose, at least for my clarification, a question.

PRESIDENT EGAN: If there is no objection, Mr. Hurley, you may ask your question.

HURLEY: Is it the intent of the Committee that interim appointments be approved by either house of the legislature or both houses of the legislature?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: It was the intent of the Committee that interim appointments could be made under this clause by the governor subject to being filled in the manner provided by the constitution which we understood would be by joint session of the legislature.

HURLEY: I guess I didn't make my point. If there is a vacancy in any appointive office and the governor appoints someone else to fill it and the legislature is not at that time in session, will it be necessary for that legislature to reconvene and approve the appointment?

V. RIVERS: No, that was not the intent. We are referring to recess or interim appointments. He may appoint under this clause without calling the legislature and they will fill it until the legislature meets, and then the policy would be to confirm them in joint session of both houses. Is that clear?

HURLEY: Yes.

PRESIDENT EGAN: Are there amendments to Section 13? Mr. White.

WHITE: I have a question of the Chairman, Mr. President, regarding Sections 11 and 12, just to make sure I understand it. Do I assume from these two sections that it is not necessary nor desirable to declare martial law in every event when the governor might wish to call out the armed forces of the state?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: As was pointed out yesterday, the declaration of martial law puts everything under the military and stops all the action of civil lawmaking and legislating bodies, and we felt that the intention here was that only in cases of invasion or rebellion or imminent danger thereof would he declare martial law. However, if you have an emergency such as was mentioned

yesterday, he could still under these sections call out his armed national guard forces or militia, if there was one, and they could take care of emergencies without the necessary declaration of martial law

PRESIDENT EGAN: Are there amendments to Section 12? Mr. Kilcher.

KILCHER: Mr. President, I have an amendment for Section 12.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 12, page 6, line 6, strike 'or invasion or imminent danger thereof' and substitute 'and actual or imminent invasion'."

PRESIDENT EGAN: Mr. Kilcher, what is your pleasure?

KILCHER: In order to bring this proposal in line with the bill of rights, they have a similar provision, I would like to move and ask unanimous consent to have this language adopted.

TAYLOR: I object.

KNIGHT: I second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. Miss Awes.

AWES: Mr. President, as I recall, this wording that Mr. Kilcher proposes does bring it in line with the bill of rights provision as amended. The language used in Section 12 as it now stands, I think was also used to make it consistent with the bill of rights and now the bill of rights has been changed and so I think this should be changed, too, and make the two consistent. I think Mr. Kilcher's amendment is a good one.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: Would you read the language in the bill of rights?

PRESIDENT EGAN: First, would the Chief Clerk please read the proposed amendment.

(The Chief Clerk read the proposed amendment again.)

AWES: That is exactly what it says in the enrolled copy of the bill of rights.

HELLENTHAL: What is that first word?

CHIEF CLERK: "...in case of rebellion and actual or imminent invasion..."

PRESIDENT EGAN: Mr Hurley.

HURLEY: Mr. President, that is not the exact wording of the bill of rights as we have it on the enrolled copy.

PRESIDENT EGAN: The Convention will be at recess for a few minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Miss Awes.

AWES: I would like to correct a statement I just made. I did not hear the whole amendment as read. She read "and actual or imminent invasion". That differs -- the first word in the bill of rights is "or" rather than "and". There is that difference.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, I think this speech is necessary. I have just talked to Delegate Mildred Hermann and she says her Committee on Style and Drafting can take care of everything on this question now before us and they have the power to do it. I am going to throw it back to Style and Drafting.

SWEENEY: Mr. President, this is one instance on which we voted to change from "and" to "or".

HELLENTHAL: No, it never came to a vote. Pardon me, I am out of order.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, the point is well taken. We should have the uniformity. As Mr. Davis said this morning, if we vote against this thing, then we have Style and Drafting in a "pickle". If we want the uniformity, let's vote for this amendment.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: We will secure uniformity, complete uniformity, if the word "and" in this amendment is changed to "or". Then the two will be identical.

KILCHER: I move and ask unanimous consent to have the word changed to "or".

R. RIVERS: Now I, ll support the amendment.

PRESIDENT EGAN: Now, the question is, "Shall the proposed amendment as offered by Mr. Kilcher be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye". All opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 12? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to inquire about something else. Where is the proposal containing the article on apportionment?

PRESIDENT EGAN: It is in the Engrossment and Enrollment Committee.

SUNDBORG: Did we ever read or adopt the part of that which contains the description of the boundaries of the election districts?

HELLENTHAL: No, and the reason for that is that it was prepared two days ago and it has been turned over to the geographers in the mining department here for checking. It is not something that need be passed on for this reason. The map that was used here set out the boundaries. They are now being reduced from the map to writing. They will be on the desk of every delegate here. It would have been possible to have them today, but I think it will be Monday now before they're out. At that time if there is any error whatsoever in the reduction of the map to the writing, each delegate will have the right to bring it to our attention, but we felt that it was merely the reduction, and just merely a mathematical thing. There was no discretion or use of judgment involved in it.

SUNDBORG: I believe, however, Mr. President, that in compliance with our rules, that should be read in second reading, whatever material it contains.

HELLENTHAL: It will have to be read, of course.

SUNDBORG: Then our record should show here that the proposal containing the article on apportionment has been referred to the Committee on Engrossment and Enrollment subject to later addition of the materials citing the boundaries of the election districts.

HELLENTHAL: Right.

PRESIDENT EGAN: Are there amendments to Section 13? Mr. Cross.

CROSS: I have an amendment on the Secretary's desk.

PRESIDENT EGAN: Will the Secretary please read the proposed amendment as offered by Mr. Cross.

CHIEF CLERK: "Section 13, line 10, after the word 'governor' add the words 'subject to procedure prescribed by law'."

PRESIDENT EGAN: Mr. Cross.

CROSS: I move that this amendment be adopted.

MARSTON: I'll second that motion.

PRESIDENT EGAN: Mr. Cross moves, Mr. Marston seconds the motion. The motion is open for discussion. Mr. Cross.

CROSS: As you will note under this section, the pardon power is the only one in this section that is not, by procedure, prescribed by law. This does not limit the governor's power. It simply gives the legislature power to prescribe a procedure that will be followed in exercising this power. It is largely a matter of protecting an honest governor from pressure. I might say that this brings this in accordance with the Constitution of Hawaii.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, how could this protect or change or in any way affect the governor's right to grant a pardon? That is an individual right and it is solely for him to determine and any law that might be passed by the legislature to devise ways and means to make up his mind. I don't see where that would be possible, let alone permissible. I think the language is perfectly adequate the way it is.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. Chairman, I believe this Section 13 is the governor's court of last resort and as soon as you prescribe anything by law, you may remove the individual's final chance of last resort in the case it is erroneous. I would prefer to see the section to remain as it is.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I would like to ask Mr. Cross to just recite precisely what he had in mind. I heard him tell the story to the Committee a while back and I would like to have tell this body.

PRESIDENT EGAN: Mr. Cross, would you care to do so?

CROSS: I might say that at first, I put in language which would limit the governor's power. I was persuaded that should not be done and anything in the constitution should merely prescribe the procedure. I had in mind the objection that was just made, that this would interfere with the court of last resort. This in no way limits the governor's power if he wants to be in the open about it and wants to hear everything. A number of years ago, I had this matter brought very forcefully to my mind, because of a certain murder case of which I was interested in the prosecution. In this particular case, the man was convicted of murder and was sentenced to life. He served only a few years. That brought this situation to my mind, and I investigated the situation in that state. I found that the average man convicted and sentenced to life imprisonment, served shortly a small amount over 12 years. A great many pardons were made on the quiet. The people who were interested in the case did not know that a man was turned loose, or what became of him. In explanation, I might say that one of the great problems of law enforcement is the case of men who commit crimes over and over. We go to a great deal of trouble and expense to convict a man of a crime, he is sentenced, and in a comparatively short time later he is picked up again for the same crime. That is the thing I have in mind. If a court convicts a man, a judge sentences him, there should be a very good reason if he does not serve that term. I think the public is entitled to know just what happened. In the case that I mentioned, most people in the state knew nothing about the procedure and what was going on. It was a situation which could be easily corrected if a procedure had been set up so that the governor, who was in the "limelight", as we say, whenever he made a pardon or commuted a sentence or changed a life sentence to a certain number of years.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, as an illustration of procedure, the person applying for a pardon would have to file an application in the governor's office or with an advisory board and that would be on file for 30 days pending final decision. In other words, an open proceedings instead of an under-the-table deal where they are slipping them out the back door without the public knowing anything about it, just because a few years have elapsed and the public memory has waned. I think that without actually cutting into his basic pardon power, that this is a good thing to have so I am going to support Mr. Cross.

PRESIDENT EGAN: Mr. Barr.

BARR: I don't intend to argue, but I do have the Hawaiian Manual here and it shows that 16 states provide that the governor may

pardon with the consent of some sort of council or committee and 20 some states provide that he shall issue a pardon in accordance with law.

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

(The Chief Clerk read the proposed amendment again.)

PRESIDENT EGAN: All those in favor of the adoption of the proposed amendment will signify by saying "aye", all those opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Mr. Fischer.

V. FISCHER: Mr. President, I move that the third sentence in Section 13 be stricken.

PRESIDENT EGAN: Mr. Fischer moves that the third sentence in Section 13 be stricken. Is there a second to the motion?

HURLEY: I'll second the motion.

PRESIDENT EGAN: Mr. Hurley seconds the motion. Mr. Fischer.

V. FISCHER: I would only like to say that this matter is taken care of under the amendment that we have just adopted. The legislature will have the authority to establish an advisory board. If we leave this sentence in, it is just another expression of policy, and not even a very strong expression of policy, since we say "The legislature may..."

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: May I ask a question of Mr. Fischer?

PRESIDENT EGAN: If there is no objection, you may ask your question.

R. RIVERS: Do you propose to strike clear to the end of the section?

V. FISCHER: No, just the third sentence.

R. RIVERS: Very good.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will

signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

PRESIDENT EGAN: What is your pleasure, Mr. Barr?

BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

BARR: Mr. President, as this is rather a long amendment --

PRESIDENT EGAN: The Chair would like to make an announcement at this time, before you proceed, Mr. Barr. The News Miner just called and Guy Rivers, brother of Vic and Ralph, was found alive and safe about 30 minutes ago. (Applause) He has been picked up and is now on his way back to Fairbanks. Mr. Barr.

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semi-judiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

PRESIDENT EGAN: Any further discussion? Mr. Marston.

MARSTON: Mr. President, if my recollection is right, in the past 14 years that I have definite recollection of, there have been only two attorney generals and the reason is that they just can't get attorneys to run for that job. I'd want to know that there are attorneys that will step up and lend themselves to be elected to that job before we pass on this. I have no argument with the mover of this amendment, Mr. Barr, except that is information that I would like to have. Maybe we have some lawyers here that could enlighten me on that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I think I could answer that. All the lawyers that favor the amendment will probably stand up, and those who don't will sit down. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the proposed amendment? Mr. Nolan.

NOLAN: Mr. President, at a meeting that I had, I think there were 12 people there on an hour and a half's notice, that was the one thing they were unanimous on. They wanted the attorney general elected by the people. They seem to think it was the one independent arm that they would have, and for that reason they were unanimous that the attorney general should be elected, and therefore I think I will support Mr. Barr's amendment.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

providing for the election of a commissioner of labor. If we yield ground in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. I am violently opposed to the election of the attorney general. I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client. It is an attorney-client relationship and the relationship has to be based on faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I be allowed to close?

PRESIDENT EGAN: If there is no other person who wishes to be heard. Mr. Stewart.

STEWART: Mr. President, may I ask Mr. McLaughlin a question?

PRESIDENT EGAN: You may, Mr. Stewart.

STEWART: Is it your idea that the attorney general, as such, he is or should act as the counsel for the legislature, as well as for the executive?

McLAUGHLIN: He should, in substance, act as counsel for the legislature. In many respects, you also have the unusual circumstance where the attorney general is of one party and the legislature is predominantly of another party.

STEWART: He may have to give decisions in one case that might favor the executive and in another case might favor the legislature?

McLAUGHLIN: That's right.

STEWART: I think that is an unwholesome situation, and should be corrected by having the attorney general purely and simply the adviser for the executive.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this has developed to the point where I want to say a few words. I wasn't going to, but when I was attorney general, that office was legislative counsel for the legislature, advised the members of the legislature, advised the various administrative departments under the governor, and advised the governor, and wrote legal opinions interpreting the law. Since that time the legislature has created a Legislative Council, that Legislative Council has a political scientist in charge, Jack McKay. It could very well have a lawyer and is authorized to engage any legal services that may be required. The legislature has full power to hire all the legal assistance it needs during the sessions so that I believe that Mr. Stewart's thought is well taken, that the attorney general will be the attorney for the executive arm of the government and that if we have the governor appoint an attorney general, he is not going to be the adviser to the legislature nor the drafter of legislative bills. Now, he may draft proposed legislation for the administrative departments. If the department of health wants a bill, the governor will tell the attorney general to get out a good bill or the commissioner of health, or as the case may be. They'll fall back on the attorney general for some bill drafting

for the governmental departments, but the legislature from now on and under this setup, is not going to have the attorney general doing its bill drafting. It's going to have its own legal counsel. The present Attorney General, because of the press of business, gave up being legislative counsel for the legislature three years ago and told them they were too busy and were just looking after the executive department, and that they were to figure out how to get their own bills drafted. Two years ago that situation got so acute that the Legislative Council was created and it serves a very useful need, but I think that Mr. McLaughlin actually emphasized the wrong answer when he said that the attorney general would be the counsel for the legislature as well as for the executive arm, because under the present development with Legislative Council, he will be the attorney for the executive branch and the legislature can take care of itself. I might also say that I wrestled with this, I started out advocating that the attorney general be elected, but I wrestled with it, I told Mr. Barr that I felt the way he did four or five days ago. Because of my doubts though, I have talked to many people, they have said if you are going to let the governor's administration be held responsible for the conduct of that administration, you have got to at least give the governor an attorney of his own choice. Under this setup he might get an attorney of the opposite political faith. He might get one of his own party who is either inadequate or who is hostile to him, or who doesn't see eye-to-eye with him. In either case, the governor could say at the end of his term, if things haven't gone well, "We had a good program but that attorney general you foisted upon me wrecked our program." There again, you have got passing the buck as to who was to blame because things didn't go well. Now then, if we want to be sure that the strong executive who is going to have the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I don't intend being an applicant for the position of attorney general either by appointment or election, but I don't quite see Delegate Marston's point that there are no attorneys in the Territory who are willing to run to be elected attorney general. I can't see how there would be any attorneys who would be willing to accept the appointment. I support Mr. Barr's position in this matter. I, too, am in favor of a strong executive, but I don't think that the mere fact that because under the appointive system of governorships that the governor virtually has no powers, that we should let that carry

us too far away. I think that it is a good thing for the people, to have their own elected attorney general who can check the legislation which the governor proposes to introduce and have introduced, and for that reason I am going to vote for this amendment.

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: I was also going to answer Colonel Marston much as Mr. Robertson did. If lawyers aren't available, they aren't available period. Mr. Rivers was talking about an entirely different thing. He mentioned our present Legislative Council. There is not a lawyer in charge. They do draft bills for the legislature. They have taken over a duty which the attorney general formerly did, that is as it should be. There is a lot of detailed work there, but it isn't legal work. If the legislature wants to ask a legal opinion, they will not go to our political science experts, they will go to the attorney general. Now he also stated that if an attorney general of the opposite political party were elected, the governor could pass the buck and say, "Well, you people see what you saddled me with here. I couldn't do anything. He wouldn't let me." Well, if there was an attorney general of the opposite political party there, he would make the governor toe the line pretty well as far as the law was concerned. All the governor could say to the people is, "You see that attorney general, he made me conform with the law." That's all this is designed to do. It isn't supposed to restrict his actions otherwise, just to conform with the law. Now, as Mr. McLaughlin said, because he was the legal counsel for the governor period, that this would not accomplish any particular purpose. It will accomplish several purposes. It is up to you people to decide how important they are. It might provide a little brake on the governor if he wants to go too far. If he wants to over-step the law just a little bit, but the principal purpose it has, the principal objective it will achieve is that it will allow the people to have more hand in the government and that is what we want.

PRESIDENT EGAN: Mr. Hellenenthal.

HELLENTHAL: I request a roll call on this vote and will raise my hand to indicate that request. Under these rules, 10 people have to --

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

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

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

Yeas: 12 - Barr, Collins, H. Fischer, Laws, McNealy, Metcalf, Nolan, Robertson, Smith, Sweeney, Taylor, Walsh.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Stewart, Sundborg, White, Mr. President.

Absent: 3 - Coghill, VanderLeest, Wien.)

CHIEF CLERK: 12 yeas, 40 nays, and 3 absent.

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

BARR: Mr. President, I had another amendment which I had intended introducing providing for the election of a commissioner of labor. I would just like to state that the reason for that was that without destroying the powers of a strong executive, I thought the people would like to have a number of officials elected someplace between the number of two and four, but I can see that this body does not believe that that should be done.

McCUTCHEON: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. McCutcheon.

McCUTCHEON: Isn't Mr. Barr speaking to a matter of personal privilege?

PRESIDENT EGAN: Do you ask to speak on a matter of personal privilege, Mr. Barr?

BARR: Yes, I will, if the tape is left on.

HURLEY: I'll move that Mr. Barr be allowed to speak on a matter of personal privilege.

PRESIDENT EGAN: If there is no objection, the rules will be suspended and Mr. Barr may have the floor on personal privilege.

BARR: I want to explain that since it is very clearly the intention of this body to have two elected officials, there is no point in me introducing this other amendment and holding up proceedings. I never intend to hold up proceedings at all. I realize the shortness of time here, so I will not introduce that amendment at this time, although in my own heart, I believe that we should have an attorney general and commissioner of labor elected.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I believe this would be an appropriate place to bring up the matter which has been bothering our Committee on Style and Drafting, if I may have the floor on that matter.

PRESIDENT EGAN: Yes, if there is no objection, you may have the floor.

SUNDBORG: I would like to know if we are creating anywhere in this constitution the office of the attorney general? And I ask it because in our article on direct legislation there is a provision that petitions for referendum and recall and the like, shall be filed with the attorney general who shall certify it to its sufficiency as to form, etc. Since we have not created that office, and I don't believe we should do it by indirection by assigning duties to the man whose office has not been created, I would like to be recognized at the end of this statement under the item of personal privilege, to make a motion and the motion would be that the rules be suspended and the Committee on Style and Drafting be instructed to make a substantive amendment in the article on direct legislation to provide that wherever the words "attorney general" appear, that they be changed to "secretary of state". I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. It occurred to us in Style and Drafting that it would be entirely proper that the secretary of state should be the officer of the state with whom petitions under the initiative and under the referendum should be filed, that if he required legal services in order to satisfy himself that they were sufficient as to form, etc., he could get them from whatever officer of the state might be provided by

legislation or otherwise for that purpose, but I think we are probably being inconsistent and maybe we are making a mistake if we set up duties for an official called the "attorney general" and don't set up the office itself in the constitution.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, believing as Mr. Sundborg does --

V. RIVERS: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mr. Rivers.

V. RIVERS: Mr. Sundborg was talking under personal privilege.

BARR: Excuse me.

SUNDBORG: I will now, Mr. President, I am at the end of my statement under personal privilege, am I recognized to make a motion?

PRESIDENT EGAN: You are, if there is no objection, Mr. Sundborg.

V. RIVERS: I object. I wish to make a statement first.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Under personal privilege, there was a minority group in the Committee who felt that the attorney general should be mentioned in the executive article and that rather than have any individual who had obligations to repay to the governor or had favors to receive from the governor by reason of political support, that he should have a certain amount of screening, he should not be limited to one individual. Now I have an amendment available as we get to the end of Section 14 which would cover that, if the body so decides to adopt it, or if the desire to wipe out the screening principle, it still would cover the appointive attorney general and the method by which he might or might not be removed from office. The present executive article is identical in the matter of not mentioning the attorney general, it is identical with the State of Hawaii Constitution in that they also did not set up an attorney general specifically, they allowed the departments to be established as we have done here, but in order to carry out the consistency in connection with the fact that we have mentioned certain duties of the attorney general, we have got prepared, or Mr. Harris and I have prepared here an amendment for discussion covering that point.

SUNDBORG: Mr. President, in view of Mr. Rivers' statement, I will withhold making my motion until the body decides whether it does wish to constitute the office of attorney general.

PRESIDENT EGAN: Are there amendments to Section 14? Mr. Buckalew.

BUCKALEW: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to Section 14.

CHIEF CLERK: "Line 23 and line 24, page 6, strike 'quasi' and 'judicial'."

PRESIDENT EGAN: Mr. Buckalew, what is your pleasure?

BUCKALEW: Mr. President, I move its adoption. Also, strike the "and".

PRESIDENT EGAN: If there is no objection, it may be added to the amendment.

BUCKALEW: I move its adoption, Mr. President.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment.

AWES: I'll second the motion.

PRESIDENT EGAN: Miss Awes seconds the motion. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 14, line 23, page 6, strike 'and quasi' and line 24, strike 'judicial'."

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: The reason I introduced this amendment is for the reason that there has been a dangerous tendency in the last 20 years to establish all kinds of boards that act almost in the capacity of a court. They have the power to fine, revoke licenses, and take all kinds of action. I think that it is setting a dangerous policy in the constitution to mention "quasi-judicial" boards with no limitations on it at all. I am opposed to quasi-judicial bodies and looking at this section with the rest of the sections, it seems to me you find yourself in the position of where you would have a fisheries board, for example, and then have at the same time have a board going

along with it which would be regulating fisheries, imposing fines and taking care of the violations under the regulations of the fishing boards. I think the language should be stricken.

V. FISCHER: May I ask Mr. Buckalew a question, Mr. President?

PRESIDENT EGAN: If there is no objection, Mr. Fischer, you may ask your question.

V. FISCHER: What does "quasi-judicial" mean? I know what "judicial" means, but what does the "quasi" mean?

BUCKALEW: I don't know exactly what it does mean, and I doubt if any lawyer in the body knows exactly what it means. It is a board that has fact-finding power and at the same time, it has the power to support its findings with some sort of punitive action so it's sort of a court, except it doesn't have the same kind of jurisdiction, but it is a combination -- I can't explain it. Mr. Hellenthal, can you?

PRESIDENT EGAN: The Convention will come to order. Mr. Hellenthal.

HELLENTHAL: It is precisely what Mr. Buckalew says it is. It is a board that has very limited functions, ordinarily assumed by specialized courts and within definite limitations so that there can be no abuses. The Interstate Commerce Commission is a very fine example of a quasi-judicial board. A utility commission is another excellent example, where they can prescribe fines for violation of utility regulations, but within a limited sphere. They can't execute you, they can't send you to the penitentiary. They can prescribe fines within a sphere set by the legislature, so there is no danger of anybody running away with anything, but the advantage of specialization is secure and that is why the quasi-judicial boards are created, so that expert men, in their fields, can interpret the laws of the legislature subject to checks imposed by the legislature.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I would like to follow up with Mr. Hellenthal. He said a utilities board would be quasi-judicial. What is the difference then between "regulatory" and "quasi-judicial"? To me a utilities board would be regulatory.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the

CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. I think if you strike, it would be erroneous and possibly fateful if we strike that word "quasi-judicial" because as Mr. Hellenthal has mentioned, in the national sphere you have the RCC, FCC, things that are important and material to us. You might even destroy the possibility of ever creating an alcoholic beverage control board under the state, and dependent on your viewpoint that is good or bad, but I would recommend that it be kept in there, if at any time it becomes an intrusion upon the judicial power, I am sure that all of those nonpartisan judges of the superior and supreme court will rise up and destroy it under the constitution.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. President, I have a question of Mr. McLaughlin, if I could ask it.

PRESIDENT EGAN: State your question.

GRAY: Mr. McLaughlin, I want to put this question to you. Do you have any recourse from the judgment of a quasi-judicial board by the courts, or is their action final?

McLAUGHLIN: No, their action is never final, particularly under our judiciary article.

PRESIDENT EGAN: Miss Awes.

AWES: I just wanted to state that I seconded the motion when it was made because I thought it was a matter that should be brought on the floor and open for discussion, but I don't want my second to be taken as approval of the striking of the word.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, in connection with this, two of the delegates who are on the Committee have checked the meaning of the word "quasi-Judicial". According to the interpretation of Webster's, which was checked and brought up by Delegate Nordale, the interpretation is given in reference to "quasi" when used

as a prefix means, "that which resembles". "Quasi-judicial, designating an act or proceeding of or before an administrative tribunal or official of the general nature of a judicial act or proceeding but not within the judicial power as defined under the Constitution." Now that is a broad interpretation of the term as we use it here, and it is the interpretation of Webster. However, Delegate Londborg has also looked the matter up in Black's Law Dictionary and it is practically the same. Do you have that here, Mr. Londborg?

LONDBORG: No, I don't.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: May I ask Mr. McLaughlin a question, or anyone else who would care to answer it?

PRESIDENT EGAN: You may, Mr. Hurley, if there is no objection.

HURLEY: If the amendment carries, and the wording is struck, it would read: "Regulatory bodies and temporary agencies..." In your opinion, if that were the case, would "regulatory bodies" imply that the legislature could, in setting up such regulatory bodies, give them quasi-judicial powers.

McLAUGHLIN: I think it could, but in view of Mr. Buckalew's attempt to strike it out, at any time when the courts go back to read the constitution, they see that Mr. Buckalew presented an amendment striking the word "quasi-judicial" on the grounds that they were getting too big and intruding on government, and they might interpret it as abolishing the right, that is abolishing the right of the legislature to create quasi-judicial bodies.

PRESIDENT EGAN: Mr. Davis.

DAVIS: I would support Mr. Buckalew's amendment, not on the ground that the agencies are too big or not desirable, but because the thing is adequately covered in the other word used.

PRESIDENT EGAN: Mr. Emberg.

EMBERG: Mr. President, I would like to put a question before the body here. Under the language of this sentence, would it be possible to set up a board which was both regulatory and at the same time a quasi-judicial body? That is what I would object to.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, I want to speak in favor of the amendment, just on the point that Mr. Emberg raised, and as to the

interpretation of the words "quasi-judicial body", I think you'll find in the law, and I believe when I mention it that the greater share of the attorneys here will agree with me, we speak of "quasi-contracts" which are, in effect, contracts implied by law and the greater share of your court's interpretations which go further than the dictionaries here, would be to the effect that the word "quasi" here, in effect, means that it is an implied judicial body. I won't enlarge on it anymore than that, but I fear this one thing, that the nomination of regulatory and quasi-judicial bodies raise a condition such as, I'll only mention one, such as the Game Commission which can set up their own rules and regulations, send out their own men to enforce them, and I am very much in favor of game conservation and the game commission, but the abuses that we have known of that right, here in the Territory and specifically in the Fourth Division where it was necessary while I was district attorney, to take issue with the Game Commission because they did set up their own laws, they felt that it wasn't necessary to abide by the laws of search and seizure. They went out and broke the locks of cabins and caches, went in and searched for furs that they thought might be there, that were improperly caught, or caught too great a number. I'm not going off on that subject because it would take a half-hour to cover all of the violations that did happen and were possible under that, and in which I believe have to a great extent been simmered down, and some of the matters were resolved against the Game Commission at that time. Now there are others that are even greater offenders than the Game Commission and I speak of them, and I back the Game Commission 100 per cent in their purpose, but the point is that if you have the words "regulatory and quasi-judicial bodies" combined here, I fear very much that it is going to open it up where you are going to establish boards that not only set up the laws, but they enforce them, and when you do you are combining legislative, executive and judicial all in one branch and it is a dangerous situation, and I feel that I am starting to get a little steamed up on this. I ought to close on a bit of humor here. I believe that I should be against the amendment on the theory that the legislature might be able to set up some implied courts in opposition to Mr. McLaughlin's judicial system.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I wish to support Mr. McNealy's views on that. I, too, question the language there, but before I start, I would like to direct a question to Mr. McLaughlin, if I may.

PRESIDENT EGAN: You may, Mr. Peratrovich.

PERATROVICH: I just want to know, under this setup, the language used here, is it possible to limit powers of such a body? Is there a way that you can regulate the powers of such a body?

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I'll put it this way, this does not direct the legislature to create these bodies and it is my personal opinion that you could not attempt to define in the constitution the limitations of the powers on the regulatory or the quasi-judicial bodies. It would be an impossibility, because the vagueness of the term would require great definition and precision. Do I think that quasi-judicial bodies are necessary? I definitely do. I think if you specifically prohibit them in your constitution, you are hamstringing yourself. The legislature won't be able to create the boards that are necessary. You will have to rely on the discretion of the legislature that they will appoint the appropriate body, and the only difference then is that they will be our collection of thieves rather than those of the national government.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I would like to relate some experiences in support of what Mr. McNealy has related to you. I can't help but feel there is a possibility of abuse of power in such a setup. In the experience I have had is in the case of game wardens and the fisheries, like Mr. McNealy relates. We have known of cases in our division where our fishermen with some fish aboard, say with perhaps 300 or 400 fish aboard caught just before darkness and go inside of the line and anchor. There would happen to be a good harbor there, and perhaps during the night the fisheries commission warden would come in there and this man is pinched and if you can't defend yourself, if you can't talk and try to reason with a warden, then you're picked up and taken into the commissioner's court. I don't say they're convicted in all cases, but it does require time to prove that you are innocent. On the other hand, if a trapper is out on his line, on his boat, anchored in the bay, he is perhaps out on his trap line. When he comes back, he finds his hatch covers all off, his food lockers all open and everything else, and that is another case of where a game warden comes along on a plane and takes the liberty of going aboard to see if they had any illegal meat, fur or something of that nature. I feel that under a setup of this type, we don't have a way of regulating their duties. I don't think we can remedy what has transpired under our former government.

PRESIDENT EGAN: Mrs. Nordale had been attempting to get the floor. Mr. Hellenthal.

HELLENTHAL: May I ask a question of Mr. Peratrovich?

PRESIDENT EGAN: If there is no objection.

HELLENTHAL: Don't you, Mr. Peratrovich, and Mr. McNealy, both feel though that those poor regulations were due to Congressional action, and that an Alaska state legislature would never permit such a situation?

PERATROVICH: I agree with you, but I want to make it clear here, that I for one don't understand the terms that you lawyers use here, but I can see very dimly that there may be a possibility of correcting the errors that we have made under our Territorial setup. If we could remedy that under the state setup, then that is what I am for, and that is the reason I want to make it clear here. I am satisfied with your explanation.

PRESIDENT EGAN: Does anyone want the floor that hasn't had the floor? Mr. Ralph Rivers. Haven't you had the floor?

R. RIVERS: Not on this subject. I have refrained up to this point, but bearing on this is the proposition that we are talking about whether regulatory and quasi-judicial bodies shall be placed in principal departments or whether they shall be placed out of principal departments. If we knock out the word "quasi-judicial", the legislature could still create quasi-judicial departments but would simply be making principal departments out of them instead of keeping them out of the principal departments. I was going to make the same point that Mr. Hellenenthal made, that we can't get to first base protesting some of the abusive enforcement methods of an agency that is created back in Washington, that we would have to go back to Congress to get remedial measures, but after we have our own legislature here, which will have the power to create these bodies, even if we do strike the word "quasi-judicial" from this particular article, we have a legislature near at hand meeting every two years where the citizens can go down and complain about how this state agency is taking this highhanded method or the other, so if we need to leave this in the hands of the legislature, let's trust the legislature to put in the suitable restrictions and go to the legislature with our complaints every two years when the time comes.

PRESIDENT EGAN: Miss Awes.

AWES: The Convention expressed the desire to adjourn about 3:45 so they could catch the bus at 4:05, and I think that clock has stopped. Mr. Marston and I both have 3:50.

PRESIDENT EGAN: Whether or not we can get to this amendment by then, we'll see. The question is, "Shall the proposed amendment as offered by Mr. Buckalew be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will

signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 17 - Armstrong, Barr, Buckalew, Coghill, Davis, Doogan, Emberg, Hurley, Johnson, Lee, McNealy, Nolan, Peratrovich, Riley, Robertson, White, Mr. President.

Nays: 36 - Awes, Boswell, Collins, Cooper, Cross, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Kilcher, King, Knight, Laws, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nordale, Poulsen, Reader, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh.

Absent: 2 - VanderLeest, Wien.)

KILCHER: Mr. President, I would like to change my vote to "yes".

PRESIDENT EGAN: Mr. Kilcher wishes to change his vote to "yes".

CHIEF CLERK: He was "yes".

KILCHER: I mean to "no".

PRESIDENT EGAN: Mr. Kilcher wishes to change his vote to "no".

KILCHER: I also will give --

PRESIDENT EGAN: That is all you can say at this time, Mr. Kilcher.

CHIEF CLERK: 17 yeas, 36 nays and 2 absent.

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

KILCHER: Mr. President, I give notice to reconsider my vote.

PRESIDENT EGAN: Mr. Kilcher serves notice of reconsideration of his vote on this particular amendment. Mr. Sundborg.

SUNDBORG: Mr. President, subject to committee and other announcements and other notices of motions to reconsider, I move that we adjourn until 9 o'clock Monday morning.

2211

PRESIDENT EGAN: Now, are there committee announcements prior to putting the motion? In case anyone is in doubt, the notice of reconsideration can be given even after the motion to adjourn has been put. Are there announcements of committees? Mr. Rosswog.

ROSSWOG: Mr. Chairman, the Local Government Committee will meet at 1 o'clock tomorrow afternoon in Apartment 19 in the Alaskan Inn.

PRESIDENT EGAN: The Local Government Committee will meet tomorrow afternoon at Apartment 19 in the Alaskan Inn. Are there other committee announcements for tomorrow? If not, the Convention will stand adjourned until 9:00 a.m. tomorrow.