

## ALASKA CONSTITUTIONAL CONVENTION

January 21, 1956

## SIXTIETH DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning Captain Hill of the Salvation Army. Captain Hill will give our daily invocation.

CAPTAIN HILL: Our Heavenly Father, we come to Thee at this time, first with gratitude for Thy many blessings to us, and O Lord Thou hast given us so many things for which to be grateful. We do want to express gratitude at this time. We also Lord, want to pray on behalf of those who gather here to frame a constitution for this Territory of Alaska. We ask that Thou wilt grant them wisdom. We do rely upon Thee at this time to give us guidance and direction as we prepare for the future of this great country. Have Thy way in all things that are said and done. In Thy name bring honor and glory to this group here. In Jesus' name we pray. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

V. RIVERS: Mr. President, Mr. Hellenthal will probably be out a little later.

SWEENEY: Mr. Coghill and Mr. Fischer are detained in town on business of the Administration Committee and will be a little late.

KNIGHT: Mr. VanderLeest is ill today.

WHITE: Mr. Riley is here.

CHIEF CLERK: Five absent.

PRESIDENT EGAN: A quorum is present. 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: Mr. President, reporting on the journal for the 53rd Convention day: Page 3, paragraph 2, insert a comma after "Burnette"; page 3, paragraph 5, insert quotation marks after "election" on line 6; page 7, paragraph 4, on third line insert "On line 17" before "delete". With those corrections, Mr. President, we ask unanimous consent for the approval of the journal.

PRESIDENT EGAN: Unanimous consent is asked for the approval of the journal as corrected by the special Committee to read the

journal of the 53rd day. Is there objection to the unanimous consent request? If not, the journal of the 53rd day is ordered approved with the corrections as noted by the special Committee to read the journal. Mr. White.

WHITE: Mr. President, reporting on the journal for the 55th Convention day: Page 1, third paragraph from the bottom, insert "Section 15" before the paragraph starting "The Attorney General"; page 5, fourth paragraph, insert "be included" after "Mr. Riley" on line 9; page 8, first paragraph after recess, insert quotation marks after "state" on line 6; page 12, first paragraph, insert "s" after "subdivision" on line 3. Mr. President, with those corrections we move and ask unanimous consent for the approval of the journal for the 55th Convention day.

PRESIDENT EGAN: Unanimous consent is asked for the approval of the journal for the 55th Convention day with the proposed corrections as noted. Is there objection? Hearing no objection it is so ordered and the journal is ordered approved. Mr. Hurley.

HURLEY: Mr. President, I would like to inquire as to the source of this anonymous article we have on our desk this morning, "Juneau as the State Capital".

PRESIDENT EGAN: Mr. Gray.

GRAY: If Mr. Hurley had not arisen so fast he would not have had to ask the question. I was just going to make an announcement that I have distributed a pamphlet here, "Juneau as the State Capital". It is self-explanatory. I think everyone will have a truer understanding of the situation of what a capital is and what it means to Juneau if this is read. If the situation comes up, it will behoove everybody to read this little pamphlet.

V. RIVERS: I would like to ask a question. I would like to know whose thinking it represents, the Committee or an individual or what?

GRAY: I first started out informally as being a member from an independent community, not related to Juneau, namely Douglas. I just wanted to help distribute this, but this pamphlet was prepared by the Juneau Chamber of Commerce.

HURLEY: I would like to ask the policy of the Convention in distributing material such as this.

PRESIDENT EGAN: The policy, Mr. Hurley, it seems to be that it is just the policy of the delegates to distribute it. Mr. Hurley.

HURLEY: My inquiry then, is it proper for any delegate to distribute anything that they think would be of value or interest to the Convention, on the desks?

PRESIDENT EGAN: If there is no objection, the Convention will be at recess for a minute or two.

RECESS

PRESIDENT EGAN: The Convention will come to order. If there is no objection, the Chair will refer the question asked by Mr. Hurley to the Chairman of the Rules Committee who can make a report on the matter at a later time.

RILEY: Mr. President, let it be noted, I am also not from Juneau. No prejudice.

PRESIDENT EGAN: Mr. Gray.

GRAY: For the record, Mr. Chairman, I wish to say this did not come out of the boiler room. This came at no cost to the Convention.

PRESIDENT EGAN: Are there communications or petitions from outside the Convention? If not, are there reports of standing committees? Of select committees? Are there any motions or resolutions? Is there any unfinished business to come before the Convention at this time? If not, we are on the amendment to Committee Proposal No. 12. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: It has been moved and seconded, "Section 1, line 1, delete the word 'shall' and insert the word 'may'."

JOHNSON: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment 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 Chief Clerk will call the roll.

RILEY: Might it be stated again?

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

CHIEF CLERK: "Section 1, line 1, delete the word 'shall' and insert the word 'may'."

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

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

- Yeas: 25 - Armstrong, Boswell, Coghill, Cooper, Davis, H. Fischer, Gray, Harris, Hinckel, Johnson, King, Laws, Londborg, McCutcheon, Metcalf, Nordale, Peratrovich, Poulsen, R. Rivers, V. Rivers, Robertson, Sweeney, Walsh, White, Mr. President.
- Nays: 22 - Awes, Barr, Collins, Cross, Emberg, V. Fischer, Hermann, Hilscher, Hurley, Kilcher, Knight, Lee, McLaughlin, McNees, Marston, Nerland, Nolan, Riley, Smith, Stewart, Sundborg, Wien.
- Absent: 8 - Buckalew, Doogan, Hellenthal, McNealy Reader, Rosswog, Taylor, VanderLeest.)

COLLINS: I wish to change my vote from "yes" to "no".

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

CHIEF CLERK: 25 yeas, 22 nays and 8 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Are there other amendments to Committee Proposal No. 12?

CHIEF CLERK: "Section 3, line 14, delete the words 'or employment' and insert 'of trust or profit under this Constitution.'"

V. RIVERS: That is a committee amendment and I believe self-explanatory, and I ask unanimous consent for its adoption.

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

MCCUTCHEON: Before you put the question, I would like to ascertain whether or not the militia or any of the armed services of the state would take this particular oath or would they take a different type of an oath, because in some other article in our constitution it states that our militia or the armed services of the state does not constitute an office of profit. If that were the case this wouldn't be applicable or binding.

V. RIVERS: This says "of trust or profit". The other covers profit only as applies to the militia and the national guard, and this is the identical wording with the exception of the last few words of the enabling act. The last few words had to be changed because there was some extraneous matter in regard to the State of Alaska. We referred merely to this constitution instead, but the rest of the wording is that of the

enabling act and is one of the requirements. I think as Delegate McCutcheon has asked, any employment of trust or profit under the state.

PRESIDENT EGAN: Is there objection to the unanimous consent request for the adoption of the amendment? If not, the proposed amendment is ordered adopted. The Chief Clerk will please read the other committee amendment.

CHIEF CLERK: "Section 5, line 11, insert a period after the word 'interest', delete the remainder of the sentence."

PRESIDENT EGAN: Insert a period after the word "interest" in line 11.

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

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

ROBERTSON: Would you repeat it again?

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

(The Chief Clerk read the proposed amendment again.)

PRESIDENT EGAN: Is there objection to the unanimous consent request?

KILCHER: I object.

PRESIDENT EGAN: Objection is heard.

V. RIVERS: I so move.

JOHNSON: I will second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, as you will note there we are striking the words "and to the extent that is consistent with the laws and the constitution of the United States, with foreign nations." Now, we believe that with this stricken we will still have the same amount of authority in the hands of the government and also believe that it may be waving a red flag at some of the Congressmen who are going to approve this constitution and who will have considerable to do with whether or not we become a state. We feel that we would like to, at times, have direct relations, perhaps, with Canada in the sense that if we were invaded and wanted to have refuge for our people,

doubtless our governor would immediately take action and negotiate with some of the provincial governors so our people could go through Canada or even be given refuge there. Such a thing might occur, but we believe that in view of the fact that the power will still remain in the chief executive for such doings, there was no intention of the Committee to abrogate the national treaty-making power when we put it in. We believe it will be done better and with less disturbance if we leave it out, so we recommend striking it.

PRESIDENT EGAN: Mr. McNees.

MCNEES: May I ask a question. You brought up an emergency factor here where such cooperation with Canada might take place, but have you given consideration to the fact that if this hydroelectric project goes in along the Yukon River there might be a peacetime negotiation there and would this possibly prohibit that?

V. RIVERS: No, we don't foresee that this would prohibit any intergovernmental relations allowed under the constitution and laws of the United States.

KILCHER: I withdraw my objection.

PRESIDENT EGAN: Mr. Kilcher withdraws his objection. Is there any further objection to the unanimous consent request? Hearing none, the amendment is ordered adopted. Mr. Victor Rivers.

V. RIVERS: Before we proceed further, Mr. President, to Section 6, I would like to ask the question of some of the legal minded individuals here in regard to the last sentence in Section 5. It says, "In all intergovernmental relations involving the state, the Governor shall act as the agent of the state. We have in our general constitutional provisions that we are considering some clause by which we allow the governor to delegate certain of those powers.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I will take a try at it and see how far I get with my colleagues of the bar. The chief executive can and has implied authority to carry out all proper functions through the assistance of subordinates and aides.

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

CHIEF CLERK: "Section 6, line 5, delete the remainder of line after the comma up to and including" the word 'purposes' on line 6." So the sentence would read shall have title to all the real and personal property now or hereafter set aside for or conveyed to it, to be administered and disposed of according

to law."

PRESIDENT EGAN: Is that a committee amendment, Mr. Rivers?

V. RIVERS: That is also a committee amendment and I move and ask unanimous consent for its adoption.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent for the adoption of the proposed committee amendment. Is there objection? Hearing no objection the proposed amendment is ordered adopted. Are there other amendments to be offered? Mr. Hurley.

HURLEY: Mr. President, may I indulge the Convention by asking a question of the Committee on this particular point?

PRESIDENT EGAN: If there is no objection.

HURLEY: Beginning on line 7, "There shall be a board of regents of the University of Alaska, the members of which shall be nominated and appointed by the Governor," etc. Would that sentence then restrict the governor from being a member of the board of regents?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: We think it would. This is the method at the present time at which members of the Board of Regents are appointed, and I feel that it would restrict the governor from being a member of the board, morally if for no other reason.

HURLEY: I simply mention the matter because of my knowledge that four of the most famous state universities do have the governor as a member of the board of regents.

PRESIDENT EGAN: Are there proposed amendments to Committee Proposal No. 12?

CHIEF CLERK: I have one on the desk.

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

CHIEF CLERK: By Chief Laws, "Section 3, line 11, strike the comma."

PRESIDENT EGAN: You ask unanimous consent, Mr. Laws, for the adoption of the amendment?

LAWS: I do.

PRESIDENT EGAN: Is there objection? Hearing no objection the proposed amendment is ordered adopted. Are there other amendments to Committee Proposal No. 12? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to propose that on the first page of this we put in a title in capitals, "General and Miscellaneous Provisions," just ahead of line 1, and that would make this uniform with other articles and proposals we have had. I ask unanimous consent.

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

CHIEF CLERK: "Insert the title 'General and Miscellaneous Provisions' in capitals before line 1."

PRESIDENT EGAN: Is there objection to the unanimous consent request for adoption of this proposed amendment? Hearing no objection the amendment is ordered adopted. Mr. McLaughlin.

MCLAUGHLIN: I move and ask unanimous consent that Section 1 of the proposal be stricken.

PRESIDENT EGAN: Mr. McLaughlin asks unanimous consent that Section 1 of the proposal be stricken.

NORDALE: I object.

PRESIDENT EGAN: Objection is heard.

MCLAUGHLIN: I so move.

EMBERG: I second the motion.

PRESIDENT EGAN: Mr. Emberg seconds the motion. The motion is open for discussion. Mr. McLaughlin.

MCLAUGHLIN: I voted against changing "shall" to "may", but as long as it is "may" now we are merely directing the legislature to do something it has the authority to do anyway, and it is merely a pious and, in a sense, an insulting expression in the constitution about the merit system, and under those circumstances I believe it should be stricken.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. McLaughlin 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 Chief Clerk will call the roll.

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

Yeas: 20 - Awes, Barr, Emberg, V. Fischer, Hilscher, Hinckel, Hurley, Kilcher, Lee, Londborg, McCutcheon, McLaughlin, McNeas, Marston, Nolan, Peratrovich, Poulsen, Stewart, Wien, Mr. President.

Nays: 27 - Armstrong, Boswell, Coghill, Collins, Cooper, Cross, Davis, H. Fischer, Gray, Harris, Hermann, Johnson, King, Knight, Laws, Metcalf, Nerland, Nordale, Riley, R. Rivers, V. Rivers, Robertson, Smith, Sundborg, Sweeney, Walsh, White.

Absent: 8 - Buckalew, Doogan, Hellenthal, McNealy, Reader, Rosswog, Taylor, VanderLeest.)

MCNEES: Mr. President, I change my vote to "yes", please.

PRESIDENT EGAN: Mr. McNees changes his vote to "yes".

CHIEF CLERK: 20 yeas, 27 nays and 8 absent.

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

SUNDBORG: Mr. President, I would like at this time to give notice that I intend to move at some future time to rescind our action taken on the committee amendment which changed "shall" to "may" in line 1 of Section 1.

PRESIDENT EGAN: Mr. Sundborg serves notice --

SUNDBORG: While I am on my feet I also would like to give notice that I intend to move that we rescind our action taken on Committee Proposal 8/a in striking Section 5. That was the one dealing with the commission or commissions for the regulation of administration of fisheries and wild life.

PRESIDENT EGAN: You are going to move to rescind at some future time?

SUNDBORG: Yes, at some future time.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Point of order. I would like to ask for a ruling at what point we can -- rescinding is more or less terminated. Is it after it leaves second reading? Where does the amending process stop?

PRESIDENT EGAN: So far as the rescinding is concerned, Mr. Victor Rivers, on a motion to rescind, the Chair does not believe that the time comes when the body could not rescind an action, but the Chair would like to state that with relation to the article, Article 8/a, which is the article on resources, that it has never been officially sent to the Committee on Engrossment and Enrollment for the reason that the Committee members had some discussions that they were pursuing among themselves in research, so that the article that Mr. Sundborg

is referring to is actually still before us, the article on resources. Mr. McCutcheon.

MCCUTCHEON: As a matter of fact, Mr. President, it appears to me that the giving of notice will freeze whatever article is before us in its position and it cannot advance to any different status than it is on the day that the notice was given, so that when we make an indefinite statement, such as "at some future period", the matter is frozen in its current allocation to committee or whatever position it is in. It cannot advance. Nothing else can be done to it until that reconsideration is handled.

PRESIDENT EGAN: Mr. McCutcheon, in the mind of the Chair, a rescinding action would not necessarily hold. It would be up to the individual to move. It is not the same motion as a motion to reconsider. Now whether the previous notice on a motion to rescind would freeze a proposal in that position after the day is over, the Chair is not quite clear on that. The Chair does not feel that it would.

MCCUTCHEON: Mr. President, my contention is this: that Mr. Sundborg seeks to give notice so that even in the third reading, before final consideration, that a bare majority could make a change in the document, and that is not the intention of the rules, I am sure. It would appear to me that any of us here could give blanket notice that we are going to move to rescind so it would require only a bare majority to make the change we endeavor to make, and that is an unfair imposition on the balance of our group here, especially in view of our short time left.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I am sure that wasn't the intention of the rules, and I don't think it could be done under our rules that way and that certainly was not my intention. My intention in giving notice on these matters was to comply with a requirement in Robert's which is our rule on this matter, that a motion to rescind requires only a majority vote if notice is given. If notice is not given it requires either a majority of the members to which the body is entitled or two-thirds of those voting, and my purpose in giving the notice is to bring this up just as soon as we have most of the members present. I noticed on roll call today there were numerous members absent. Just as soon as we do have close to the full membership here, I will bring the motions up.

PRESIDENT EGAN: Mr. Barr.

BARR: I must be confused. I notice we have some rules saying that notice to reconsider or a notice to rescind must be made within one hour after the vote taken.

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PRESIDENT EGAN: Does it say "rescind"?

BARR: Yes it does.

RILEY: Mr. President, the rule was not adopted.

PRESIDENT EGAN: That was one of the rules that was not adopted, Mr. Barr.

JOHNSON: Point of information. The rule which was stated by Mr. Sundborg regarding the notice of a motion to rescind -- does not Robert's Rules of Order also provide that a notice to rescind in order to obviate the necessity of more than a majority vote, doesn't the notice have to be given on the same day that the action was taken?

PRESIDENT EGAN: It does not say that so far as the Chair recollects, Mr. Johnson, with regard to the motion to rescind. If there is no objection the Convention will be at recess for two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Are there other amendments to Committee Proposal No. 12? If not, the proposal is referred to the Committee on Engrossment and Enrollment. Mr. Robertson.

ROBERTSON: Mr. President, what was the ruling of the Chair on the point of order?

PRESIDENT EGAN: What was the point of order, Mr. Johnson?

JOHNSON: I did not make a point of order.

PRESIDENT EGAN: A rescinding action cannot hold anything beyond tomorrow, that is certain in the rules. Mr. Sundborg, could, if he so desired, later in the day bring the matter up and it would take a majority vote. Mr. Sundborg.

SUNDBORG: Mr. President, by tomorrow, you mean the next day on which we have a session? In case we do not meet tomorrow it would be in order Monday?

PRESIDENT EGAN: It would be, Mr. Sundborg, the next meeting. We have before us Committee Proposal No. 15. The Chief Clerk may read Committee Proposal No. 15 for the second time.

(The Chief Clerk read Committee Proposal No. 15 in its entirety.)

PRESIDENT EGAN: Does the Committee have a statement to make with relation to this proposal? Mr. Sundborg.

SUNDBORG: Mr. President, as stated in the covering letter, these are all matters which were assigned to the Style and Drafting Committee by the committee chairmen; we have consulted a number of other constitutions and we have consulted technical advisers here, and we propose this language. I think each of the sections speaks for itself. We don't consider any of them terribly important, but this is material which is included in most constitutions among the miscellaneous provisions. I think that it could be contended that without, for instance, Section 2, that the constitution would be so construed anyway, but we feel it would be better to have it in the constitution so there would be no doubt about it.

PRESIDENT EGAN: Are there amendments? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to move and ask unanimous consent that the sections in this proposal be added as sections of Committee Proposal No. 12, general and miscellaneous provisions, and that the section number instead of being 1, 2, 3 and 4, as they are in Committee Proposal No. 15, be renumbered 7, 8, 9 and 10.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent that Committee Proposal No. 15 become a part of Committee Proposal No. 12 and that the sections become Sections 7, 8, 9 and 10. Is there objection? Hearing no objection it is so ordered. Mr. Riley.

RILEY: Mr. President, I ask unanimous consent that Committee Proposal No. 15 be referred direct to Style and Drafting for which the rules will have to be suspended and that Committee Proposal No. 11, last evening which was referred to Engrossment also without any amendment or change, be referred direct to Style and Drafting under suspension of the rules. It would be re-referred in that case.

V. RIVERS: Point of information. This ties 15 into part of 12.

PRESIDENT EGAN: That is correct, and 12 has already been referred, Mr. Riley, to Engrossment and Enrollment.

RILEY: My comment will then be only on 11 so as to save floor time on reporting out.

PRESIDENT EGAN: Committee Proposal No. 12 is now in the Engrossment and Enrollment Committee unless by unanimous consent, Mr. Riley, you would make your request. Are you talking about No. 11 now?

RILEY: Yes, it would simply go to Style and Drafting -- it was not amended in any respect.

PRESIDENT EGAN: Is there any objection to referring Committee Proposal No. 11 directly to Style and Drafting? Hearing no objection it is so ordered. Now as to your request with relation to Committee Proposal No. 15 --

RILEY: I understand.

PRESIDENT EGAN: You understand now? Committee Proposal No. 15 has been adopted as a part of Committee Proposal No. 12 and is also referred to the Committee on Engrossment and Enrollment to make that addition. Mr. Sundborg.

SUNDBORG: Might I inquire whether there are other committees that will be bringing in miscellaneous provisions? If so, I think it would be wise to hold this proposal before the Convention and to add the others to it so that when we have an enrolled copy we will have all the provisions in it and it won't be coming out in short takes. Now there may be no other miscellaneous provisions contemplated.

PRESIDENT EGAN: Mr. Smith.

SMITH: Referring back to the second requirement of the enabling act, which refers to the disclaimer of right and title to lands and property belonging to the United States and held in trust for Indians and Aleuts, etc., I remember that that section was referred to the Committee on Ordinances and Transitional Measures, and there is a question in my mind as to whether or not that might not also be included in the article containing the miscellaneous provisions. I realize now that it probably would have been better to have let that provision go through in the legislative article and then leave it to Style and Drafting to place it where it belongs, but since that question is still open, I wonder if it might not be better to leave the article on miscellaneous provisions open until that matter is disposed of.

PRESIDENT EGAN: If there is no objection, it will be so ordered and the Committee on Engrossment and Enrollment will then not report the article back to the body until we are certain that all the miscellaneous provisions have been considered on the floor. Now, it would seem that we have before us only, or we could possibly have before us the Style and Drafting's report on the Committee of the Judiciary. Is there objection to proceeding with the article on judiciary at this time? It has been in the possession of the delegates for better than 24 hours, is that right, Miss Awes?

AWES: I just have a question. We have a report on our desks of the Committee on Resolutions and Recommendations suggesting that we adopt a resolution. I was wondering when we took those things up.

PRESIDENT EGAN: Is there objection to proceeding with this report of the Committee on Resolutions? Mr. Riley, as Chairman of the Rules Committee, do you have anything to say?

RILEY: I discussed the matter with the author yesterday and also the secretariat. I know of no reason for not taking it up now. There had been some feeling expressed that it be later on the calendar, but I think in view of the fact the calendar is relatively open, we might just as well consider it now.

PRESIDENT EGAN: If there is no objection then, we will proceed with the report of the Committee on Resolutions and Recommendations, in second reading at this time. Would the Chief Clerk please read the report. Mr. Marston?

MARSTON: Mr. President, Dr. Sady suggested that that be held for some time at a later date. He felt it would be more important. I would like to call on the suggestion of Dr. Sady and ask unanimous consent that we wait until he clears it.

PRESIDENT EGAN: If there is no objection the report will be held in abeyance until a later time. Mr. Barr.

BARR: I mean, what does Dr. Sady have to do with it? Point of information. Why does Dr. Sady want it held?

MARSTON: It was my idea -- I wrote it up and took it to him, and he put the expert's touch to it and suggested that at a later date it might be more important coming at the end of this Convention than right now. I was hoping to go out before Christmas, but now that time has passed I am following Sady's suggestion and that is all.

BARR: I see it needs a little amending.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I would like to rise on a point of information, while the subject of a resolution came up. I have been wondering for some time now exactly what the purpose of the Convention resolution is, what the procedures on it would be, what scope they would follow, what effect they would have. In the same question as to ordinances, we have had a number of ordinances suggested in the past; people have talked about various ordinances. What effect does an ordinance have upon this state and what effect does it have upon the legislature? If this question is in order now.

PRESIDENT EGAN: If there is no objection, Mr. Riley, would you care to answer the questions?

RILEY: Mr. President, I think it would be more appropriate, if I may, for a member of the Committee on Ordinances reply in that respect. As to resolutions we have had two types, those that

simply affect our organization and procedure here, statements of policy, and others that have been introduced which are more the nature of a memorial to some other agencies, as I would expect this of Mr. Marston's to be.

PRESIDENT EGAN: The Chair notes that the Chairman of the Ordinance Committee is not present this morning.

CHIEF CLERK: He is upstairs.

HURLEY: Mr. President, the question is a loaded one in that there is considerable difference of legal interpretation of the word "ordinance". However, I might say this that it is fairly uniformly held that an ordinance is a transitional measure or having the force of law during the period when the constitution takes effect and is carried into being. There is a period there, as we all realize, that adjustments must be made; and the ordinances are presumably the part of the document that the Convention has decided are necessary in order to effectuate that transition with as little difficulty as possible. The word "schedule", or the title "schedule" and the title "ordinance" and the title "transitional provisions" have been held in at least three cases which I am familiar with, to be synonymous in their effect, not in their context, so that I think in my opinion and the opinion of the Committee the term "ordinance" is a generic term applied to one of the items in a schedule or a group of transitional provisions. That is, of course, a different legal meaning than the term "ordinance" in itself, which we know as a law rather than a transitional provision. Now, I may have confused the issue more than cleared it, but maybe I could answer a question correctly.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: If I may follow up slightly, does each and every ordinance adopted by this Convention have to be ratified individually by the voters?

HURLEY: That probably goes to a matter of opinion, but it is the opinion of the Committee that the answer is "no", that all of the ordinances may be approved at the same time the constitution is approved. Now I might say in that connection there has been more than one method used that in some cases the constitution itself has been ratified with the feeling on the part of the court that the ordinances themselves were necessary provisions to put the constitution into effect, and it did not require the separate or even the conjunctive approval of the voters. In other cases, the constitution and the ordinances and transitional provisions have been submitted to the voters for their approval at referendum. It is our intention, if I am not getting ahead of my story a little bit of what the Ordinance Committee intends to do shall I go into that?

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

HURLEY: To provide that both methods, that the constitution and the ordinances will be approved by a referendum of the voters and besides that, that one or two, I think at the present time we will recommend that two ordinances be separately approved at referendum, so I think the answer to the question is that it is a matter of choice of the Convention as to whether or not they desire to have separate approval on the particular ordinances or whether they desire to have, as has been expressed, a package deal, but I do think this, that the Committee is very desirous that the referendum be applied to the constitution and those ordinances which do not particularly take a separate way.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: May I address a question to Mr. Hurley?

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

SUNDBORG: Mr. Hurley, can any ordinance take effect before Congress passes an act admitting Alaska as a state of the union?

HURLEY: You have got into a proposition in which both Mr. Buckalew and Mr. McNealy have put in a great bit of study Generally speaking, I might answer the question as "no", but I have to make a reservation in that courts have also held that where the matter is submitted to referendum that you have a situation of vox populi, that the people in voting on that referendum have expressed their approval of it, and since we recognize that the government arises from the people, courts have held that if that ordinance is approved by a majority of the voters that it does then have the effect of law, even in the interim period. Now that, I might say, is not a uniform opinion but it is a possibility.

SUNDBORG: Mr. Hurley, I asked this with special reference to the proposal that we adopted, the so-called Tennessee Plan, and I am wondering whether we can carry that into effect, if we have any authority to carry it into effect without action by the Congress admitting Alaska as a state.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I might say that when this matter is presented to the floor, which it will be in an ordinance from the Ordinance Committee, that a much fuller explanation of those ramifications will be made at that time. I hesitate in the absence of my two brethren here to go into it too deeply because they are presently making a further study of the matter and will be prepared at that time to give a complete explanation.

PRESIDENT EGAN: Before we proceed with Committee Proposal No. 2, as it has been reported back from the Committee on Style and Drafting, the Chair would like to ask the Sergeant at Arms to ask any delegates in the building to be present during this reading of the proposal. If there are any delegates upstairs, please suggest that they come down. Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I would request a ten-minute recess prior to the reading of that so I can consult with the Judiciary Committee.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for ten minutes.

MCLAUGHLIN: The Judiciary Committee will meet in the rear.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Sergeant at Arms will see if there are any delegates upstairs. The Convention will be at ease. The Convention will come to order. The Chief Clerk will read the report of the Committee on Style and Drafting on the judiciary article in its entirety at this time.

(The Clerk read the report at this time by Style and Drafting on Committee Proposal No. 2.)

MCCUTCHEON: Mr. President, there is only one question that arises in my mind; in Sections 1, 2, --

DAVIS: Just hold it, I will take care of that in my explanation.

PRESIDENT EGAN: Mr. Riley, with relation to the rules, did you have a statement to make at this time?

RILEY: Mr. Chairman, if I follow the question, are you perhaps speaking of this brochure?

PRESIDENT EGAN: No, the Chair understood from Mr. Davis that you had a statement to make. If you do not, Mr. Davis, do you have a statement to make with relation to the article? Mr. Sundborg.

SUNDBORG: Mr. President, I would like to suggest that Mr. Davis, who was the chairman of the subcommittee of Style and Drafting that did most of the detailed work on this article, give a brief explanation of just what was done and why it was done.

PRESIDENT EGAN: Mr. Davis, would you give that explanation at this time?

DAVIS: Mr. President, in a general way, since this is the first matter to come back from Style and Drafting, I think I might make some statements to tell how Style and Drafting has been

operating. In the first place, we divide ourselves into subcommittees of three to consider various articles which had been given to us. That was for two reasons: first, a nine-man committee is unwieldy to work on something of this kind; second, we had a good many articles that were dumped into our laps at the same time, and so we felt that the subcommittee method worked best. The subcommittee as such worked on this particular section. The matter was then taken up with the Judiciary Committee which originally brought in the proposal. After checking with that Committee the matter was checked with the consultants we have here; Mr. Bebout we have particularly for the purpose of telling us whether we have left out anything that we should have put in, or whether we have put in anything we should have left out, and Dr. [J. Kimbrough] Owen on the matter of general style and language. Following that then, the entire Committee sat down with Dr. Owen and went over the article section by section and some changes were made that way. After that was done the matter was again taken up with the Judiciary Committee. That is the way this thing worked. Now yesterday it appeared that there seemed to be considerable fear expressed on the floor here that Style and Drafting was rewriting these articles in such a way as to change the intent of the body in adopting the article in the first place. I want to state on behalf of Style and Drafting that that is not our intent unless we tell you so. There are some places where we feel it is necessary to make certain changes that might be substantive to fit in with other articles. When that happens we will tell you so, and so far as this article is concerned, we have checked and double checked it and have checked it with the Committee and we believe that we have retained all of the substantive matters in the original article and we do not believe we have made any additions of substance. Now, any person, of course, or any committee is fallible, and we may be very well shown to be wrong. So for that reason we want each member of the Convention to carefully go over this and if they feel any change of substance has been made or anything added that should not have been added, we want to be told, but we want you to go at it with understanding that to the best of the ability of the rule of the Style and Drafting Committee the matter has come out with the same intent that it went into our hands, and any changes that have been made are certainly inadvertent on our part if any such occurred.

V. RIVERS: Point of information. May we have the names of the three on the subcommittee who worked on this?

DAVIS: Yes. Mr. Hurley, Mr. Fischer and myself, on this particular article. As I said, the entire Committee went over the article as well.

MCLAUGHLIN: Point of information. Did any member of the Judiciary Committee work on the subcommittee, and is it the policy of the Style and Drafting Committee to permit any member of any committee who produced a bill to work on the bill in subcommittee?

DAVIS: No member of the Judiciary Committee worked on the subcommittee, and Mr. McLaughlin made it clear at the time we started consideration of this article that he wanted no part of styling this particular article so that it could not be said that the substantive committee was handling this matter. Is that clear? At the outset the subcommittee here took this judiciary article to pieces and put it back together in several respects. For that reason you cannot take this article and read it against the enrolled copy without reading both of them completely because a hurried reading of the Style and Drafting copy would indicate that some portions have been left out, where in fact, that is not the case. As a quick resume on that, if you were to read this article in a hurry, you would see right away that the enrolled copy said that the judicial council should consist of six members, where the Style and Drafting Committee says the judicial council shall consist of seven members. Now, the reason for that is that a reading of the article will show, the enrolled copy will show they actually intended seven members all the time but they were worried about how they were going to get the supreme court justice on that committee when in fact he had not been appointed at the beginning. We have taken care of that by a separate section at the end, Section 18, which we have separated out of the body of the judicial article and which we intend to have go into a transitional ordinance. We believe that since the staggered terms of judicial council will only happen once, I mean the setup of it will only happen once, after you once get the council appointed, the terms will be staggered and thereafter the problem does not arise, so we believed it was not either necessary or desirable to keep the language about staggered terms in the body of the constitution, and for that reason we have made a separate section which we intend to lift out of the body of the judicial article and put it in a transitional measure. The same thing is true in a different manner as to the question that a service in the armed forces is not an office of profit. You will remember that that appears in one position in the present judicial article. Now, it has already come out on the floor in at least one other article and probably will come in others, and we figured that that matter could best be handled by a general provision in the constitution that service in the armed forces is not an office of profit as provided in the constitution, and for that reason once again we lifted that language out of the particular section and set it up in a separate section at the end of the judicial article. I think that is Section 17, as I remember it, with the intention that that section will be taken out of the judicial article and fitted into the proper place in the entire constitution. Now, to get to Steve's problem here. He has got his whole copy marked up on the side -- "initiative, initiative" -- and he started to ask a question, and that is a good question. As quick as we started working on this article, we found that we had used interchangeably, the terms "by the legislature" or "by law". You will remember at the time the judicial article was considered by the Convention we had not yet considered the initi-

ative, and I am satisfied in my own mind, and I think that the Judiciary Committee agrees with me on this point, that at the time the article was before the Convention that we meant exactly the same when we said "by law" or "by the legislature". After we adopted, at least tentatively, an initiative article of course it was obvious that the terms "by the legislature" and "by law" are no longer synonymous. They might mean two different things because the initiative initiates laws. For that reason in order to try to keep the thinking of the Convention in our first draft of this matter we kept the terms all the way through just as they were in their enrolled copies. Wherever it said "by the legislature" we left it that way; wherever it said "by law" we left them that way. Then, in order to try to resolve the problem -- I should back up just a minute -- there is considerable feeling by some people, and I might say that I am one of them, that the setting up and the jurisdiction of the courts is something that should properly be handled by the legislature and not left to the initiative and for that reason in an attempt to find out where we were going on this thing, we held a combined meeting of some members from Style and Drafting, some from the Judiciary Committee, and some from the Initiative Committee, to find out how it was best to handle this problem, and the result of that meeting was that most members, I think we had only one dissent, but most members felt in that bunch that the courts should be something that should be handled by the legislature and not by the initiative, but it was not unanimous, and we do not know how the body as a whole feels, but as a result of that meeting we agreed that probably the best way to handle this thing would be to change the judicial article to provide "by law" in each case, and then to request the body to make a further exception in the initiative article when it came before the body to exempt the jurisdiction in the make-up of the courts from the initiative article. With that in mind then we did in our next and final draft change all of these provisions to read "by law" wherever it had said "by law" or "by the legislature". We changed them except in two instances here where it is obvious we couldn't have meant anything but the legislature. One of those instances is where the legislature by a vote of two houses, of each house, must approve any change of the rules. The other was in connection with the confirmation of members of the judicial council; once again it was so written we couldn't have meant anything but "the legislature" so with that in mind we went through the article and changed everywhere it said "by the legislature" or "by law". With those two exceptions we changed it to read "by law". That, then, was the purpose for my question at the time we started the resources article. I asked as to whether, when you say "legislature" do you mean "legislature" or do you mean "by law", and the answer by the Committee was that when we say "legislature" we mean legislature, not initiative. It occurs to me and to some of the others that have been working on this, that if each article that comes in is going to have things that they feel should be limited to action by the legislature, that then we are going to make the

initiative article as long as a sled track and completely unworkable if we say, "The initiative shall apply except, except, except, except", and so we have thought it would be best if the Convention wishes to limit some of these things to action by the legislature, to adopt a general miscellaneous provision to the effect that when the article says "legislature it means just that, and when it says "by law", it will mean action by either the legislature or by the initiative. If we adopt that approach, then the article which we have prepared here is wrong to that extent if the body decides that they want the courts to be set up by the legislature and not by the legislature and the initiative. Now that is something we will have to decide here, but I think, Steve, that answers what you were asking. I think that I have pretty well covered the matter here. I do have between my draft of the enrolled copy and my copy, my original copy of Style and Drafting, I believe with a little work I can tell anybody where a particular article came from or where a particular article went in the final draft. Now I don't have it in too good shape, but I think I can find it. One thing further I wish to state, that the article has been checked by a member from the Judiciary Committee, and by the Judiciary Committee as a whole, and I believe that they have no exceptions or objections to it except in the question of whether the courts are going to be set by the initiative or not, and that point is before the body.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Point of information, Mr. President. Mr. Davis said the rule-making power or the changes in rules must be approved by a two-thirds vote of the legislature. I do not read it that way. Did you so state just a moment ago?

DAVIS: I think I did, Mr. Rivers, but what I meant was -- I wasn't, of course, talking about that particular section except as an illustration. The section itself will control, and what it says is that it will stand unless disapproved.

V. RIVERS: I still don't read it that way.

DAVIS: All right, I will read it then.

V. RIVERS: I was just checking the enrolled copy to see. Mr. President, I merely wanted the record straight. It does not say "shall be approved by a two-thirds vote of the legislature", it says that "it may be changed by a two-thirds vote of the legislature". That is an entirely different action.

DAVIS: I heard, although I did not attempt to read that particular section, Mr. Rivers, I was only using it as a matter of illustration.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: To confirm what Mr. Davis has said, we had a representative of the Judiciary Committee present and I believe it is the unanimous agreement of the Committee that there have been no substantive changes made by Style and Drafting, unless those substantive changes on the matter of "provided by law" or "provided by the legislature", which in substance will be left to the body except upon motion of amendment by Mr. Robertson.

PRESIDENT EGAN: Are there questions with relation to Section 1? Mr. Robertson.

ROBERTSON: Amendments are not up now, are they?

PRESIDENT EGAN: We are in the process of accepting or rejecting the report of the Style and Drafting Committee.

ROBERTSON: Mr. President, I would like to ask Mr. McLaughlin, the Chairman of the Judiciary Branch Committee, if it is not true that the Judiciary Branch Committee when submitting this proposal did not intend in Section 1 that where the words "by law" are used, it means "by the legislature"?

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: You place me in an awkward position, Mr. Robertson, because frankly I don't know what we intended. We hadn't discussed the initiative and I cannot speak for the Committee, but we did use in many instances "legislature" interchangeably with "law", although that might not be the viewpoint of many members of the Committee.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, point of inquiry. Must we not settle, first of all, before we can proceed upon the suggestion of the Committee on Style and Drafting as outlined by Mr. Davis, because Mr. Davis said that should that suggestion be accepted, then in some instances here the report of the Committee on Style and Drafting as to this particular article must be changed?

PRESIDENT EGAN: Is it the wish of the body that at this time that a motion be made on that subject from the floor and we discuss it and settle it before we go section by section? Mr. Kilcher.

KILCHER: Mr. President, since the thought of the initiative was not clear when this article was first adopted in second reading, I think that each section should be viewed in the light of the initiative. I don't think it would be wise to either reject or adopt a motion that includes or excludes initiative for the whole article. There may well be instances where matters should be left to the legislature and there may be a few instances where the initiative might get due consideration.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I wanted to rectify a statement to the embarrassment of Mr. Robertson. I did not mean it that way, but when he says "Did the Committee intend it to be the 'legislature'", I would say by elimination "yes"; where we said "by law" we thought in terms of the legislature because of the fact we were not even thinking of the initiative, and "by law" we did in fact treat it in terms of the legislature.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I served on both committees, both the Initiative and Judiciary, and it was my own personal thought that we said or used the phrase "by law" we meant the legislature and not the initiative or the referendum.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: In order to have something before us, I move that in Section 1 wherever the words "by law" are used that they be changed to read "by the legislature", and I move that the rule be suspended.

ROBERTSON: I second the motion.

PRESIDENT EGAN: Mr. Johnson moves that the rules be suspended and that the words "by law" wherever they appear, be changed to read "by the legislature" in each case where those words appear in Section 1. Mr. Robertson.

ROBERTSON: I would suggest that if Mr. Johnson is agreeable that that also apply to Section 2, Section 3, Section 4, Section 9, Section 11, and Section 13.

JOHNSON: I certainly have no objection. However, in light of Mr. Kilcher's observation I thought that in order to expedite it, it might be better to proceed section by section. However, I am perfectly willing to include the other sections because they certainly apply.

PRESIDENT EGAN: Is it your wish that the other sections be included?

JOHNSON: It is.

PRESIDENT EGAN: Then the motion will include the words wherever they appear in the proposal.

ROBERTSON: No, only in those particular sections I mentioned.

V. RIVERS: I will ask Mr. Robertson if he included Section 11 there?

ROBERTSON: Yes, I mentioned Section 11 and Section 13.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I would like to ask the proposer of the motion a question now in order to get the thinking; if we vote on the question I want to know what we have done. Mr. Johnson, by proposing this motion is it your intention that if the motion passes, that by using the word "legislature" that we have meant that we have limited the operation to the legislature and the initiative does not apply in those instances? Is that your intention?

JOHNSON: That is my intention.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Mr. President, I fail to see any great threat anywhere throughout this article, and I read it carefully last night; I spent a little better than two hours on it last night comparing it with the enrolled copy. I fail to see any threat whatsoever to the judiciary article by leaving the words "by law" remain in the article where they are found. The basis of constitutional law is that certain rights are reserved, certain reservations are made within the constitution and all other laws are left up to the legislature and to the people. Inasmuch as this body has gone on record as favoring the initiative, I do not feel that we should relegate it to a position of second-or third-or fourth-class nature in the formation of the statutory laws of our new proposed state. I have heard many discussions, informal on this subject this morning, and I think that we are probably being faced by some bugaboos that actually are not there. I am a firm believer that the initiative is something that belongs in our constitution just as much as I feel that the legislature belongs in our constitution. I don't feel that we can separate them and say that one law is going to have greater value or greater realm of power than a law stemming from some other source. I would heartily oppose any effort here to say, carte blanche, without serious discussion and study on the part of every delegate in this room that we can go through and say Section 1, 2, 3, and with the exception of Section 11, we are going to change the words "by law" to read the "legislature". I don't feel that that would be the will of this group; I certainly do not feel it would be the will of the people who elected us here. I think we must give much more consideration to it than that.

PRESIDENT EGAN: The Chair would like to state that ordinarily the motion to suspend the rules is not debatable, but inasmuch as within that motion to suspend the rules the proposed amendment was included, that it is permissible to discuss the question before us. Mr. Collins.

COLLINS: As Chairman of the Committee on the Initiative, Referendum and Recall, I would like to ask Mr. Davis if this move would not take the power of the initiative out. The initiative is a law itself. Of course, we have provided in the initiative for Section 3, "The legislature shall prescribe the procedure to be followed, the exercise of the power and initiative and referendum except as herein provided." I am just wondering if it would not take the power of the initiative away. Our Committee would firmly stand by the initiative. Mr. Taylor is not here, he is Vice Chairman of this Committee. I am sorry he is not here, but before a move is made I would like to have the opinion of the Committee, my Committee on the Initiative and Referendum. I think it is very vital at this point. If they endeavor to take away the power of the initiative I oppose it, and I want the backing of the Committee.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. Collins, in my opinion to answer your question, in my opinion, if we adopt the motion which has been proposed we have taken away the power of the initiative as to the subjects covered in these particular articles.

COLLINS: Can you make that exception?

DAVIS: I don't see why not. I intended, if this carries, I intended certainly to provide somewhere in here a miscellaneous article in the constitution to the effect that when we have used the words "the legislature" as distinguished from "by law", that action then was limited to the legislature in those particular places. To further go ahead with what you mentioned, you will remember that we held a committee meeting which included members from your Committee. I don't remember whether you were there or not, but Mr. Taylor was there.

COLLINS: I was there.

DAVIS: At that time it was proposed, I think without dissent so far as that committee of committees was concerned, that we would offer an amendment to the initiative article to specifically eliminate, to specifically exclude the setup and jurisdiction of the courts from the initiative article. That is what we had agreed to do at that time, but this other thing has come up since. That is why we have the problem now, that apparently other committees are talking the same position and if they do we will have more exceptions in the initiative than we have initiative. That is the point I was trying to get at awhile ago. Now it is purely a matter of policy here as to whether the body itself wants to exempt the jurisdiction and the make-up of the courts from the initiative. So far as I, as an individual am concerned, I do favor that, but that is something that the body itself has got to decide; neither Style and Drafting nor either of the substantive committees can decide

that point.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, to carry this forward to what seems to me to be a logical conclusion, I wonder if the makers of the motion would be willing to hold it in abeyance until we decide the more basic question as outlined by Mr. Davis. It seems to me we have to decide that basic method of procedure before we know what we are going to do when we change or don't change the words in this article, "as prescribed by law". It wouldn't affect your motion, Mr. Johnson, but don't you think it might be better to settle the basic procedure first?

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I assume what Mr. White has in mind is perhaps a division on the question and we vote --

WHITE: I have in mind, Mr. Johnson, if you would agree to hold it in abeyance and move in line with the later suggestion of the Committee on Style and Drafting that a miscellaneous provision be adopted by the Convention as outlined by Mr. Davis.

JOHNSON: I beg your pardon, I have no objection to that.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, it appears to me that this is the basic question right now. The proposal that Mr. Johnson has offered is the basic question. It does not only apply to this particular article but it can apply and may apply to all other articles and we are now at this time arguing a differentiation between "by law" and "by legislature", so it seems to me that the point could be argued very clearly at this time.

WHITE: That is correct, but Style and Drafting has changed this article in some respects to read "as prescribed by law". In doing so they intended that at first that under the initiative an exception be made for the judiciary.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Point of order, Mr. President, I think that is a misstatement of fact. The Style and Drafting Committee, in my opinion, has no right to recommend a change in the substance of the whole constitution. I recognize that Mr. Davis, in presenting this thing, did the best he could and probably did it right, but the fact of the matter is that any decision that was made was a decision that was improper in itself, and it was simply, our job is to point this problem up and not to recommend a solution to the thing.

WHITE: Mr. President, in answer to Mr. McCutcheon, I maintain that settling the basic method of procedure at this time would not affect Mr. Johnson's motion or any discussion of it that may ensue. The only thing it would do is clarify what our procedure is going to be in each case. If Mr. Johnson agrees to hold his motion in abeyance as he had agreed, then I am prepared to make a motion.

PRESIDENT EGAN: Has Mr. Johnson agreed then that his motion will be held in abeyance and will not be before us at this time? Do you ask unanimous consent that it be held in abeyance?

JOHNSON: I do.

PRESIDENT EGAN: Is there objection to that request? Hearing no objection then, the motion as has been made by Mr. Johnson will be held in abeyance until a later time. Mr. White still has the floor if he has a motion.

WHITE: Mr. President, I move that it be the policy of the Convention to adopt a miscellaneous provision which shall say that when the constitution says "the legislature" it means the legislature only and that when it says "by law" it means by the state or by the legislature. I so move.

PRESIDENT EGAN: Is there a second?

MCNEES: I second the motion.

PRESIDENT EGAN: Mr. McNees seconds the motion.

MARSTON: Is it open for discussion?

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

MARSTON: May I ask a question of Mr. Davis? What position has Style and Drafting taken on the initiative where it says "by law or "by legislature", have they also done the same thing on the initiative powers going into the legislature?

DAVIS: Mr. Marston, Mr. Hurley had the right idea awhile ago when he said that Style and Drafting cannot decide that. I do not agree with Mr. Hurley when he said we shouldn't propose a solution if we had one because I think somebody has got to do it, but at the minute in working on the initiative article this point doesn't come up. Had this matter been limited to the judicial and had the body wanted to limit action on the judiciary to the legislature we could have then proposed an amendment to the initiative article which would have taken care of that, but so far as I see, the action taken now won't have any effect at all on the initiative article as such. It will, certainly if adopted, take certain things away from the initiating power that might be given unless the motion were adopted.

Have I answered your question?

MARSTON: I understood, I have heard that where we say "by law" in the initiative, you say "by legislature". If that is the case, why then we have no initiative.

DAVIS: Style and Drafting up to the present time has not completed its work on the initiative at all. I don't think that point has even arisen in connection with that article. The only one we have completed and the only one we have dealt with on this question is the one before us now, the judiciary.

MARSTON: The decision to make this "by legislature" or "by law" in the judiciary, would that affect the position of the initiative when it comes up to do the same thing?

DAVIS: No. The fact of the matter is, if we can be sure where the Convention wants to go here, then we will know what to do when some of these other articles come up. That is the reason for bringing it up at this time.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I feel that as Chairman of the Style and Drafting Committee I should point out that it is not the recommendation of the Style and Drafting Committee that there be a miscellaneous article such as Mr. White has proposed here. We have discussed it in our Committee, but I am sure we have taken no action to recommend that as a committee action to the Convention. Is that correct, Mr. Davis?

DAVIS: That is absolutely correct.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I feel that the issue with Mr. White's motion is clear cut. The question is simply whether or not we want to leave it to the recommendation of each committee to decide whether or not the items within the proposal shall be or shall not be subject to the initiative. If they feel they shall not be subject to the initiative all they will have to do then is to put the word "legislature" in there and it will take care of it.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Point of inquiry of Mr. White. Is his motion broad enough? That is, he distinguishes between two classes. He says where they said "legislature" and where they say "law", "legislature" means that you are immune from the initiative and "by law" means that the provisions are subject to the initiative, but unfortunately most committees have used it so indiscriminately that they provide in the same sentence the expression

"legislature" and "law". I will read from page 5, line 6, of the resources article that we have just approved. It says "The legislature shall provide for the issuance, type and terms of leases, etc., as may be prescribed by law," so that the legislature provides for the issuance under that theory and yet by the initiative they can change the number and type of minerals that are subject to it, so I think perhaps, maybe if Mr. White asks for a five-minute recess maybe something can be worked out, something generally.

PRESIDENT EGAN: The Chair would like to state too, Mr. White, if your motion is, in effect, a suspension of the rules and would take a two-thirds vote because we do not have the subject of miscellaneous provisions before us at this time, if the motion were to be voted upon at this time it would take a two-thirds vote unless such a motion were made at such a time when miscellaneous provisions were before us in their regular order.

WHITE: Mr. President, I would then withdraw my motion and ask unanimous consent that the rules be suspended so that we can consider this matter at this time.

PRESIDENT EGAN: Mr. White asks unanimous consent to withdraw his motion previously made. Is there objection?

MCNEES: I will withdraw my second.

PRESIDENT EGAN: Now Mr. White moves that the rules be suspended so that we can consider the question of miscellaneous provisions.

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Point of information. If Mr. White's motion to suspend the rules should carry, would that suspension of the rules include the motion that I had previously presented?

PRESIDENT EGAN: No, it would not, Mr. Johnson. It would include no other motion except the delegates know that then Mr. White could offer the motion that he previously made and it could be carried then by a majority vote. The question is, "Shall the rules be suspended so that Mr. White may make a motion to include in the miscellaneous provisions an extra provision in the miscellaneous provisions?"

WHITE: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked. Is there objection for the suspension of the rules? If not, the rules are suspended and Mr. White, you may make your motion at this time.

WHITE: Mr. President, I now ask for a five-minute recess.

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

## RECESS

PRESIDENT EGAN: The Convention will come to order. The Sergeant at Arms will please locate the absent delegates. The Convention will be at ease.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, a point of information. In our rules, is there a call of the Convention?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: The only mention is that the Convention may provide for a call of the members, and we have not done so.

COGHILL: The reason why I mentioned this is that those discussions we had on those last articles that as we get them prepared to submit them into the constitution, I believe that all the delegates should be present while that is going on, and if we have a call of the Convention, supposing we have a member of our group that is out of town or something, what would be the procedure on that? Would everything stop?

PRESIDENT EGAN: Of course, Mr. Coghill, usually in other assemblies, that is handled just on the basis of judgment, that the person or the assembly will waive if there is some real reason that a person is absent, such as, if he were called away because of illness or something like that, either by unanimous consent or suspension of the rules --

SUNDBORG: Mr. President, if the matter is likely to come up, I suggest that the Rules Committee might be asked to draft a rule on call of the house. If somebody tries here within the next day or two, or week or two, which is all we have left, a call of the house, we really do not have any provisions covering it; and Robert's does not have a specific provision. It just says that "Bodies may adopt procedures such as the following..." and gives suggested ones for call of the house and there are several alternatives in there.

PRESIDENT EGAN: The Convention is at ease right now, we are waiting for the absent delegates. The President will call the Convention to order.

COLLINS: I move and ask unanimous consent that we recess until 1:30.

PRESIDENT EGAN: Mr. Collins moves and asks unanimous consent that the Convention stand at recess until 1:30. Are there

committee announcements?

COLLINS: And that contact be made with all the absentees.

PRESIDENT EGAN: That all the absent members be contacted in that time. Mr. Coghill.

COGHILL: Mr. President, not an objection but a committee announcement. The Committee on Administration will not have a luncheon meeting but we will meet immediately upon recess in the large committee room upstairs.

PRESIDENT EGAN: The Committee on Administration will meet immediately upon recess in the large committee room upstairs. Mr. Sundborg.

SUNDBORG: Do I remember that you announced a meeting of the committee chairmen for this noon?

PRESIDENT EGAN: That is correct, Mr. Sundborg. There will be a luncheon meeting of the committee chairmen at 12:30 in the luncheon room. Mr. Davis.

DAVIS: I wish to object to the unanimous consent. I see no reason why we should not go ahead.

PRESIDENT EGAN: Objection is heard to Mr. Collins' unanimous consent request.

COLLINS: I so move.

MCNEES: I second the motion.

PRESIDENT EGAN: It has been moved and seconded by Mr. McNees that the Convention stand at recess until 1:30 p.m. The question is, "Shall the Convention stand at recess until 1:30 p.m.?" All those in favor 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: 24 - Awes, Barr, Coghill, Collins, Cross, Doogan, Emberg, H. Fischer, Harris, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McNees, Marston, Poulsen, V. Rivers, Robertson, Smith, Stewart, Sweeney.

Nays: 21 - Boswell, Cooper, Davis, V. Fischer, Gray, Hermann, Hinckel, Hurley, McCutcheon, McLaughlin, Metcalf, Nerland, Nolan, Nordale, Peratrovich, R. Rivers, Sundborg, Walsh, White, Wien, Mr. President.

Absent: 10 - Armstrong, Buckalew, Hellenthal, Hilscher, McNealy, Reader, Riley, Rosswog, Taylor, VanderLeest.)

CHIEF CLERK: 24 yeas, 21 nays and 10 absent.

PRESIDENT EGAN: So the "yeas" have it and the Convention will stand at recess until 1:30 p.m. Mr. McNees.

MCNEES: May I suggest that the Sergeant at Arms be instructed to contact the absent members during the luncheon hour and give us a report on our reconvening at 1:30.

PRESIDENT EGAN: Mr. McNees requests that the Sergeant at Arms be instructed to contact the absent members during the luncheon hour and give the Convention a report during recess. Mr. Sundborg.

SUNDBORG: Mr. President, Style and Drafting will meet immediately at the rear of the gallery.

PRESIDENT EGAN: The Convention is at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk may proceed with the reading of communications. The Convention will come to order.

(The Chief Clerk read a telegram from Cyrus E. Peck, Grand Secretary, Alaska Native Brotherhood, Juneau, urging that the action taken by the Convention which voted down the amendment regarding native lands in Committee Proposal No. 8/a be sustained.)

The Chief Clerk read a telegram from Arthur Skinner, Juneau, urging the Convention to reconsider its action on Section 5 of Committee Proposal No. 8/a, pertaining to fish and wildlife.)

PRESIDENT EGAN: Are there other communications? Mr. Victor Rivers.

V. RIVERS: May I ask who is Arthur Skinner?

SUNDBORG: Mr. President, he owns a sporting goods store in Juneau and is very active in the Territorial Sportsmen, which is the local sporting fraternity there.

PRESIDENT EGAN: Mr. Robertson?

ROBERTSON: Did he say what politicians wanted to grind their axes?

NERLAND: Was that addressed to an individual or to the Convention?

PRESIDENT EGAN: It was addressed to the President of the Convention. Mr. Smith.

SMITH: Mr. President, I would like to have the privilege of the floor for just a very short time.

PRESIDENT EGAN: If there is no objection, Mr. Smith, you are granted the privilege of the floor.

(Mr. Smith spoke under a question of personal privilege.)

PRESIDENT EGAN: We have before us the proposed amendment as offered by Mr. White. Mr. McNealy.

MCNEALY: Mr. President, I am sorry I did not speak before. I wonder if I can ask unanimous consent for the introduction of Committee Proposal No. 16 at this time.

PRESIDENT EGAN: If there is no objection we will revert to the order of business of introduction of proposals at this time. Mr. McNealy asks unanimous consent for the introduction of Committee Proposal No. 16 at this time. Would you tell us what the proposal relates to?

MCNEALY: The disclaimer as to Native lands which was taken from the legislative article almost intact, and there is a consent to the enabling act and possibly this body has passed upon the committee proposal in regard to the University and if so that could be struck out of this one.

PRESIDENT EGAN: You mean, Mr. McNealy, that this particular proposal had been before us and then referred from the floor to your Committee?

MCNEALY: Yes.

PRESIDENT EGAN: Is there objection to the introduction of Committee Proposal No. 16 at this time? Hearing no objection, the Clerk may read the Committee Proposal No. 16 at this time for the first time.

CHIEF CLERK: "Committee Proposal No. 16, introduced by the Committee on Ordinances and Transitional Measures, 'GENERAL AND MISCELLANEOUS PROVISIONS'."

PRESIDENT EGAN: The proposal is referred to the Rules Committee for assignment to the calendar. Mr. White.

WHITE: Mr. President, I renew my motion made before the luncheon recess and withdrawn.

PRESIDENT EGAN: Would the Chief Clerk please read the proposed motion offered by Mr. White.

CHIEF CLERK: You withdrew a motion.

WHIIE: I know. Now I offer it again.

PRESIDENT EGAN: Had you actually offered the motion at that time or had we just voted on the suspension of the rules?

CHIEF CLERK: No.

PRESIDENT EGAN: You may offer the motion. The Chief Clerk will read the proposed motion.

CHIEF CLERK: "That it be the policy of the Convention to adopt a miscellaneous provision which shall say 'when the constitution says "The legislature" it means the legislature only, and that when it says "by law" it means by initiative or by the legislature.'"

WHITE: Mr. President, I move the adoption of the motion.

PRESIDENT EGAN: Mr. White moves the adoption of the motion. Is there a second?

BUCKALEW: I second the motion.

PRESIDENT EGAN: Mr. Buckalew seconds the motion. Mr. White.

WHITE: Mr. President, this is one of these dilemmas we get into that is very difficult of solution. I proposed the amendment to provide a policy under which we can work that I feel we could all understand and we can proceed from there knowing what we are doing each time we come to one of these matters in each of the articles. I would suggest that a vote "yes" on the motion should mean that the Convention is in favor of differentiating between a case where it wishes a matter to be in the hands of the legislature only or whether it wishes it to be subject to the initiative. A vote "no" should mean that the Convention wishes to have every such item subject to the initiative. If this motion is voted down it is my understanding that somebody else will propose a like motion that will say a miscellaneous provision should be adopted stating that the words "by law" or "by the legislature" could be used interchangeably throughout the constitution.

V. RIVERS: Will you have the Chief Clerk read the motion again? I want the exact wording of that.

PRESIDENT EGAN: Would the Chief Clerk please read the motion again.

CHIEF CLERK: "That it be the policy of the Convention to adopt a miscellaneous provision which shall say that 'when the constitution says "the legislature" it means the legislature only and that when it says "by law" it means by initiative or by the legislature.'"

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we have reached a very fundamental question, and we are going to be making a very fundamental decision. If we distinguish between the meaning of the words "by law" or "by the legislature" we are raising a substantive question in every case where those words appear. I have talked to various committee people and most of them say that they did not have the distinction clearly in mind when they drafted their proposals. They used them more or less interchangeably without stopping to think of the distinctions. If we are going to raise a substantive question on the meaning of those words, then we get into the problem of whether all these articles should go back to their standing committees for decision on that fundamental substantive question which is involved or else we will just keep them on the floor here and we will fight it out every time one of those terms arises as to what we mean by it. Of course, only the body can make the final decision. As far as the Judiciary is concerned, the members of that Committee were thinking only of the legislature. Ours was among the first out and we didn't stop to think about the distinction. We used the words interchangeably. However, the Judiciary is pretty well constructed right in the constitution. The initiative power does not extend to changing the constitution. We have our courts with the main jurisdiction defined and the judicial council and everything we have written in here; the initiative could not touch it. However, we have said "by law" with regard to about seven points, as Mr. Robertson pointed out this morning. One is that inferior courts could be established by law, and the salaries of justices and judges could be changed by law, and the number of justices of the supreme court may be increased, but only upon request of the supreme court, so that would not apply. And then additional qualifications are prescribed by law for judges. I am perfectly secure as far as the judiciary article is concerned. I don't think the public is going to concern itself by initiative, whether it is going to change the salary of judges or create an inferior court. We have the broad question before us and that is what I am speaking to. The Judiciary raised this because we think those are not proper subjects for the initiative. Neither are they subjects that the public is going to be interested in from the standpoint of the initiative, and I feel if we go through with the distinction that Mr. Barrie White would establish here -- I really fully approve of having him raise the point at this time -- I feel that every proposal that comes before us from now on in third reading is before us on a substantive question as to what we mean by those particular terms and I doubt that the remaining

14 days is long enough for us to fight that battle out every time we come across those terms. So, in the interest of the entire Constitutional Convention, I am willing to let the Judiciary take a chance. I am not speaking for any of my colleagues on the Committee. I am willing to let Judiciary take a chance, and I am willing to say that let the initiative apply wherever it would ordinarily apply without making that distinction, because if we start giving an initiative which we have done, and then say, "except this, except this", and take every proposal and treat that as a matter of substance, for the rest of this Convention during the third reading, I am afraid we are just about wrecking the operation, so if the Convention votes this down, Mr. Barrie White's amendment, I am going to propose one to the effect that those words may be used interchangeably wherever applicable insofar as the initiative is concerned. If we take that decision now we can go ahead and wind up this Convention. Otherwise, I don't see where we are coming out.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I agree entirely with Mr. Rivers that we will be spending the rest of our days worrying as to what exactly the meaning of each of those words is. It seems to me that in the passing of the proposed article on direct legislation, we made a decision in this particular matter; we said as follows: "The initiative and referendum may not be used as a means of earmarking revenues for making or defeating of appropriations of public funds or for local or special legislation." We specifically exempted those. I don't think it is right for us as an afterthought to start going through the whole constitution and add additional items that are not subject to the initiative. I personally am not a believer in the initiative; however, if you have it, let's be honest about it; let's be above board about it. If you believe that certain items should be exempted let's put them into Section 5 of Article 3 and specifically exempt them from the initiative instead of going through each article, section by section, and by hidden meanings prevent the people from exercising the initiative.

PRESIDENT EGAN: Miss Awes.

AWES: I agree with Mr. Fischer that we adopted the initiative with certain exceptions which appear in that article. The proposal that is before us now was decided before we adopted the initiative, so I think the problem is with it, and it seems to me that Style and Drafting acted very properly when they used a consistent term "by the law", the one they chose, and I think in this case we should decide the matter as a substantive matter. The other proposals where we are concerned with it, I think all came up after the initiative was adopted, and therefore, I think the Style and Drafting should continue to use the term "by law" and I think then it would be understood that the

initiative did apply to it. If there is some case where it is felt that the initiative should not apply, as in this proposal, then I think we have a duty to consider it. Otherwise, it seems to me we should just assume it because we all knew the initiative had been adopted and we presented our proposals. For that reason I approve of the idea of Barrie White's motion. I think that the constitution "by law" should mean that we can adopt it either by the legislature or by referendum; and I also agree that "by the legislature" means by the legislature only. However, I disagree when Mr. White says if we vote no on his proposal that we vote against that meaning of the terms because I agree with his idea, and I agree that is what the terms should mean in the constitution, but I think it's obvious, and I don't think we need a section in the constitution that says so.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I was going to add my voice to that of Mr. Fischer and Mr. Rivers. Yesterday, when I asked a question relative to the possibility of these various articles coming back from Style and Drafting to the still standing substantive committees, I had that very idea in mind. Mr. George Sundborg very improperly, I thought, answered my question rather than allowing it to come from the Chair or the floor in general. I went to the Rules Committee later in the afternoon, but due to the lack of time did not get a chance to be heard. I feel that this question before us now is one of substantive matter. I do feel that the floor has definitely gone on record in favor of the initiative, and we have hamstrung the initiative far enough in the article itself, so I do not feel now that time will permit our going ahead and treating each article as we come to it. Therefore, I do feel we have to resolve this question now, and in a sense I do not feel that Mr. Barrie White's present motion is the proper answer to it; but I do think we are going to have to keep this constantly in mind as we face the various articles as they come up, and I think that properly that could best be handled by referring these articles back to the substantive committees prior to presentation to the floor.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I believe we had an agreement here that one member should be appointed from each committee to work with Style and Drafting to help prevent any material change being made in the article. Now, if that is done, that member could inform Style and Drafting as to whether or not the committee meant "legislature" or both the initiative and the legislature. If he is not quite sure about it he could check with the rest of the members of the committee to tell him, and then when that proposal is reported out on the floor by Style and Drafting we would know that it would agree with the committee report and it would not delay these proceedings another two weeks or more.

I don't see any possibility of that except perhaps with this one we have before us. Now, in deciding whether or not we should change this one so that we have the initiative on everything in the judiciary article, there are two things we must consider here. One of them, is it right, is it morally right to make exceptions to the initiative after we have adopted it; and the other thing is, is it desirable and necessary? Now, as far as the right or wrong of it is concerned, we must remember this: The initiative is only one part of this constitution. The judiciary article is another part. When a law is passed or enacted by the legislature consisting of several sections, one section is usually interpreted in connection with and working in conjunction with all the other sections of the law. That is the way I look at the initiative. The initiative is operating under the constitution, not under the initiative alone, but under the constitution, and there are other sections to the constitution. If it is desirable and necessary to have a few exceptions to the initiative, that the reason for it is just as strong as the reason for the initiative. Now, I can't see where there would be many exceptions. On finance and taxation I believe the people should have a say about everything connected with it; on the report of the executive branch, setting up the framework of our state government, I can't think of anything that should be kept from the people -- they should be able to change a form of government if they want; in the judiciary there might be two or three things that would not be quite proper to have the people use the initiative on, because I can't see where they should be able to abolish a court or to change the boundaries of a judicial district. They are amply protected by the recall in case there is some judge that is not performing properly and they think he should be dispossessed, they can recall him; that seems to be enough.

of order. I think Mr. Barr is arguing the proposition of pro or con of the initiative. I don't think that is the subject material that is before us.

PRESIDENT EGAN: Mr. Barr seems to be arguing on the proposed motion of Mr. White's.

BARR: If this amendment would carry, it would make quite a difference on the way in which the thing works, whether it would encompass everything or only a part. I believe that we should have the two terms distinguished one from the other and that when we refer to the "legislature" we should mean laws by the legislature only, and when we say "initiative" mean initiative, and when we say "by law" we mean one or both, and there are few cases where I believe it is more proper that we say "by the legislature", but I will say that 98 per cent of the time the initiative would apply.

PRESIDENT EGAN: Mr. Riley.

RILEY: Pursuing Mr. Fischer's position on the initiative and the several references to its adoption, I think it should be noted that the initiative has not been adopted and that the whole problem will vanish if appropriate action is taken when it is in third reading and on final passage.

PRESIDENT EGAN: Is there further discussion? Mr. Marston.

MARSTON: Mr. President, I think the Judiciary who brought this up are split 50-50, if I have been advised rightly, on bringing this issue up. I observe the two men who started this were opposed to the initiative and referendum on the floor, and I am still believing that you can trust the people and you seem to be again afraid of the people. I think it is the checks and the balances and the people have a right to set up the legislature, to have a check and balance on them, and if we continue this line of chain action you will destroy the initiative and referendum, if that is what this body wants to do I am for this body. I saw artful maneuvering the other night, the will of the people thwarted, and I don't like to have an issue destroyed indirectly. If we are going to destroy this referendum let's come out in the open and vote against it. I think this is a chain reaction that would destroy the effect of the initiative and referendum and we would just be kidding the people if we continue this course. Where the initiative and referendum says "legislature" it means legislature; where the initiative and referendum bill says "law" it means law, and I would like to fight it on those grounds on my own position. I am for the initiative and referendum, and we are on a nice way of destroying it by artful maneuvering.

PRESIDENT EGAN: The Chair would like to state again for all of the delegates, all of us, it is not becoming in the opinion of the Chair to refer to any other delegates or actions of other delegates in a derogatory manner or impugn in any manner the reasons for actions of any other delegates on this floor. Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, could the Chief Clerk read Mr. White's resolution, or motion, very slowly so we could copy it so there would be no misunderstanding?

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

CHIEF CLERK: "That it be the policy of the Convention to adopt a miscellaneous provision which shall say that 'when the constitution says "the legislature" it means the legislature only, and that when it says "by law" it means by initiative or by the legislature.'"

PRESIDENT EGAN: Mr. Cross.

CROSS: Mr. President, when we were writing this constitution and these articles we made no distinction between "legislature" and the "law". I am opposed to going ahead and making that distinction now. I can foresee hours and hours of debate on that. Let's get back to the question and vote this down.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I won't feel badly at all if this motion is voted down. I merely proposed it as a means of clearing the air and establishing basic policy. Whether or not we agree with Miss Awes that we do or do not need such a provision, I think if you want to exempt a number of things from the initiative we do need such a provision, because there seems to be some doubt among the delegates as to what we have meant in the past when we say "by the legislature" or "by law", and I propose it only as a means of clearing the air.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: I was delayed in arriving here and I would like to be allowed not to vote on this subject because I have not heard all the debate. I ask to abstain.

PRESIDENT EGAN: You ask to abstain? The question is, "Shall the proposed motion as offered by Mr. White be adopted by the Convention?"

METCALF: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 18 - Barr, Buckalew, Coghill, Collins, Cooper, Davis, Johnson, Kilcher, Laws, McCutcheon, McNealy, Nerland, Nolan, Peratrovich, Poulsen, Reader, Robertson, Taylor.

Nays: 34 - Armstrong, Awes, Boswell, Cross, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, King, Knight, Lee, Londborg, McLaughlin, McNees, Marston, Metcalf, Nordale, Riley, R. Rivers, V. Rivers, Smith, Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 2 - Hellenthal, VanderLeest.

Abstaining: 1 - Rosswog.)

PRESIDENT EGAN: The Convention will come to order. The Chief

Clerk is tallying the ballot.

CHIEF CLERK: 18 yeas, 34 nays, 2 absent, and 1 abstaining.

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

R. RIVERS: Mr. President, I ask on a point of information. The rules were suspended so we could vote on Mr. Barrie White's motion which was to help us arrive at a policy in regard to the use of the terms we were discussing. I have a motion to submit. Does it take, on the same subject but approaching it from the other end, that is to the effect that the words may be used interchangeably wherever applicable as far as the initiative and referendum is concerned. Does that take another suspension of the rules?

PRESIDENT EGAN: Mr. Ralph Rivers, if there would be no objection to your so making a motion and having it carried as a majority vote, it would be all right. Mr. McCutcheon.

MCCUTCHEON: Point of order. Didn't this last vote make it perfectly clear how it is to apply? They are actually interchangeable, and I think that is what Mr. White predicated his motion on, was to make it perfectly clear.

PRESIDENT EGAN: Mr. McCutcheon, your point of order to that point would be well taken, but Mr. Ralph Rivers has raised the question, as the Chair understood his statement, that without some statement such as he proposes, it might not be clearly understood in the constitution. Is that not right? Mr. Johnson.

JOHNSON: Point of order. This morning when I had a motion before the Convention it was laid aside pending action on Mr. White's motion. Now, do I not have the right to renew that motion before anyone else does?

PRESIDENT EGAN: Mr. Johnson, you certainly do, and the Chair forgot.

R. RIVERS: I rise to a point of order, too. The Chair announced when he made his decision that Mr. Johnson's motion was suspended to be acted upon later, he did not say immediately after Mr. White's motion, and once more we are on the immediate question, and I think Mr. Johnson's deferral, I should think, would go until we have arrived at a result.

PRESIDENT EGAN: If there is no objection the Convention will be at recess for a minute or two.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Ralph Rivers, it would take a suspension of the rules at this time, even if there were no other motion.

R. RIVERS: In that case I will not offer my motion or ask to suspend rules and will yield to Mr. Johnson.

PRESIDENT EGAN: The Chief Clerk may read the proposed motion as offered by Mr. Johnson.

CHIEF CLERK: "That in Section 1, Section 4, Section 9, Section 11 and Section 13, wherever the words 'by law' are used they be changed to read 'by the legislature'."

JOHNSON: I believe Section 2 was included.

CHIEF CLERK: Yes, Section 2. Sections 1, 2, 3, 4, 9, 11 and 13.

PRESIDENT EGAN: That motion included the suspending of the rules and that this amendment be adopted. Mr. White.

WHITE: May I ask Mr. Johnson a question? Mr. Johnson, what does this mean?

JOHNSON: Well, if the motion carries, it would mean that so far as the judiciary article is concerned, it would be subject to change only by action of the legislature.

PRESIDENT EGAN: The question is, "Shall the rules be suspended and the proposed amendment of Mr. Johnson be adopted?" The Chief Clerk will call the roll.

MCNEES: I don't feel the members of the floor have had a chance to peruse these articles as outlined here in 15 or 20 seconds.

PRESIDENT EGAN: Mr. McNees, there had been considerable debate before, no one arose. You may be heard, we have not started the roll call.

MCNEES: I just did not feel we could skip over and say that this wide variety of all articles could be all-inclusive in a vote at this moment.

PRESIDENT EGAN: The Chair recalls that you were heard on this this morning. Mr. Coghill.

COGHILL: Point of order. We are just voting now on the suspension of the rules. We are not voting on the main question.

PRESIDENT EGAN: No, Mr. Johnson included this morning in the suspension of the rules his amendment.

COGHILL: His amendment is also a part?

PRESIDENT EGAN: It is part of the question before us. Mr. Doogan.

DOOGAN: If I understand this motion correctly, every place it says "law" in here it means "the legislature", is that right? Is it "by law" or "law"?

ROBERTSON: Just in those particular sections that are included in the motion 1, 2, 3, 4, 9, 11, 13.

DOOGAN: Is it "by law" or wherever it says "law" that you want to change it?

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

CHIEF CLERK: "In Sections 1, 2, 3, 4, 9, 11 and 13, wherever the words 'by law' are used they be changed to read 'by the legislature' and move that the rules be suspended."

PRESIDENT EGAN: This is the same motion that was debated at some length this morning. Perhaps that is the misunderstanding that some of the delegates thought it was a new proposed amendment. Mr. Sundborg.

SUNDBORG: Mr. President, my study of the draft convinces me that these are the only sections in the judiciary article where the term "by law" is used, so it would be throughout this article, in every reference, it would be "by the legislature", if this motion carries.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: While I support Mr. Johnson's motion, I contend that Section 11 and Section 13 need not be changed because they are predicated upon a monetary situation, and according to the initiative as it is written at this time they cannot initiate in a monetary fashion, or on monetary subjects.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: It excludes initiating appropriations but it does not exclude legislation which would spend money.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I do not profess to be a parliamentarian, and I would like to raise the question of having a dual motion such as this to suspend the rules and to approve an amendment. I would like to know --

PRESIDENT EGAN: Mr. Coghill, if Mr. Johnson moved to suspend the rules, 37 votes then would put the question back to where he could then make his proposed amendment and have it carried by a majority vote, but the motion as made by Mr. Johnson was all-inclusive that the amendment be acted upon at that time. Of course, in all fairness, the Chair would state to Mr. Johnson often times you can get a suspension of the rules, whereas if the question is included in that suspension of the rules you might not get the suspension; it is up to you to decide, the Chair would feel, whether or not he wishes to include that.

JOHNSON: In view of the statement of the Chair I have proposed a division of the question and would request that the matter be submitted on the suspension of the rules first.

PRESIDENT EGAN: If there is no objection the question would be then on the suspension of the rules first. The question would be, "Shall the rules be suspended in order that Mr. Johnson may offer his proposed amendment?" Mr. Sundborg.

SUNDBORG: Mr. President, did you rule on Mr. Johnson's request that the question be divided? He requested it I realize, but did you say --

PRESIDENT EGAN: There was no objection. Mr. McCutcheon.

MCCUTCHEON: Point of order. Again, it is my contention on the point that there is no suspension of the rules required on this matter because it is a change in terminology and not necessarily in substance.

PRESIDENT EGAN: Mr. McCutcheon, the Chair would feel that it changes the substance definitely for the reason that if Mr. Johnson's amendment he proposes to offer, if the suspension carries, if his amendment carries, it will limit it to being an act of the legislature rather than a possible act also of the initiative and referendum, so it would be a change in substance. That would be the ruling of the Chair. The question is "Shall the rules be suspended?" The Chief Clerk will call the roll.

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

Yeas: 33 - Armstrong, Awes, Barr, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Gray, Harris, Hermann, Johnson, King, Laws, McCutcheon, McLaughlin, McNealy, Metcalf, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, Robertson, Rosswog, Sweeney, Taylor, Walsh, Wien, Mr. President.

Nays: 20 - Coghill, Collins, Emberg, H. Fischer, V. Fischer, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee, Londborg, McNees, Marston, Peratrovich, V. Rivers, Smith, Stewart, Sundborg, White.

Absent: 2 - Hellenthal, VanderLeest.)

CHIEF CLERK: 33 yeas, 20 nays and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the rules have not been suspended. Are there other questions with relation to Section 1? Mr. Johnson.

JOHNSON: Mr. President, I ask unanimous consent to withdraw my motion, that is the remainder of the motion.

PRESIDENT EGAN: Mr. Johnson asks unanimous consent that the motion be withdrawn. It actually should not have been before us. Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, I will try it again. I asked for unanimous consent to the suspension of the rules so that I may introduce a motion.

PRESIDENT EGAN: The Convention will come to order.

MCCUTCHEON: Point of information. I would like to hear the matter of the motion before I rule on that, or whether I would object.

PRESIDENT EGAN: Mr. McLaughlin, would you inform the body.

MCLAUGHLIN: It is my intent, if the rules are suspended, to introduce the following motion to be adopted by the Convention or rejected by the Convention: "That it is the intent of the Convention that all provisions of the constitution which include the words 'by the legislature' or 'the legislature', unless clearly inapplicable or unless specifically excluded from the initiative and referendum by the article on the initiative and referendum, shall be subject to the initiative and referendum."

HERMANN: I think the motion ought to be submitted to Style and Drafting. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Mr. McLaughlin asks unanimous consent for the suspension of the rules in order that he may introduce such a motion. Is there objection?

BUCKALEW: I object.

PRESIDENT EGAN: Objection is heard. Did you so move, Mr.

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McLaughlin?

MCLAUGHLIN: I so move.

KNIGHT: I second the motion.

PRESIDENT EGAN: The question is, "Shall the rules be suspended?" The Chief Clerk will call the roll.

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

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nolan, Nordale, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, White, Wien.

Nays: 6 - Buckalew, Coghill, Marston, Peratrovich, Poulsen, Mr. President.

Absent: 2 - Hellenthal, VanderLeest.)

CHIEF CLERK: 47 yeas, 6 nays and 2 absent.

PRESIDENT EGAN: The "yeas" have it and the rules have been suspended. Mr. McLaughlin.

MCLAUGHLIN: Do I now move, Mr. Chairman?

PRESIDENT EGAN: Would you submit it to the Chief Clerk please.

TAYLOR: May we have five minutes to look that over, please?

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk will please read the proposed amendment as offered by Mr. McLaughlin.

CHIEF CLERK: "That it is the intent of the Convention that all provisions of the constitution which include the words 'by the legislature' or 'the legislature', unless clearly inapplicable or unless specifically excluded from the initiative and referendum by the article on the initiative and referendum, shall be subject to the initiative and referendum."

PRESIDENT EGAN: Mr. Cooper.

COOPER: Point of order. The other day a rule was adopted in addition to the other rules that we had which said that any amendment that was long would have to be mimeographed and I would like to ask to have this mimeographed.

MCLAUGHLIN: Mr. Chairman, may I point out this is not an amendment to anything. It is merely a statement of intent.

PRESIDENT EGAN: Do you still raise your point of order?

COOPER: No, I will withdraw it.

HARRIS: Mr. President, I would like to ask Mr. McLaughlin a question if I may.

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

HARRIS: Mr. McLaughlin, if the words "by law" are stated I guess that would also apply to the initiative and referendum as well as the legislature?

MCLAUGHLIN: Yes, that is clearly the understanding of this body at the moment that "by the law" makes it subject to the initiative and referendum, if I may speak on this, Mr. Chairman.

PRESIDENT EGAN: You may speak on this, Mr. McLaughlin, but did you so move?

MCLAUGHLIN: I so move.

BARR: I second it.

PRESIDENT EGAN: Mr. McLaughlin moves, seconded by Mr. Barr.

MCLAUGHLIN: Regrettably this is wordy, but the wordiness is necessary so that we cover in most of the problems that confront Style and Drafting. All we are asking is that the Convention notes immediately that where we use in any article, have used in any article the expression "by the legislature" or we have used in any article the proposal, the words "the legislature", unless those things obviously are inapplicable they are subject to the initiative and the referendum unless they are otherwise specifically excluded from the article on the initiative and referendum. What do I mean by that? I mean by that this: where we say "the legislature shall provide", automatically on the adoption of this constitution, Style and Drafting can say, we can substitute the words "by law". It means that where we say "further provision shall be made by the legislature", Style and Drafting upon adoption of this can say they mean "according to law", or "by law" because we automatically have then confirmed, in a sense, the article on the initiative and

referendum and said unless you are specifically -- you have been specifically exempted by the article on the initiative and referendum, this section of the constitution where the expression "the legislature" is used is subject to the article on the initiative and referendum and it means "by the law". You have a "yes" or a "no". We don't intend to insert anything in here in the constitution. It is a statement of intent, but it means that now and hereafter Style and Drafting has a clear directive from the Convention. What do I mean here by "unless clearly inapplicable"? I will give you the best example; it has been used before. Certainly we wouldn't intend, where you read in the article on the judiciary that the supreme court may adopt rules which may be, in substance, disapproved by two-thirds of each house of the legislature, because it was obviously meant from that context that that couldn't be subject to the initiative, and so we are clearly indicating here that where we use the expression "by the legislature" or the expression "the legislature" we mean completely, thoroughly and wholeheartedly know that it is subject not only to the initiative but to the referendum, and where it is clearly inapplicable, even 55 idiots would agree that it was inapplicable. That is not a reflection upon the body, Mr. Chairman, if it is, it is upon myself alone. Thank you. (Laughter)

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I am afraid I haven't anything witty to say.

PRESIDENT EGAN: Mr. Johnson has the floor.

JOHNSON: I would like to point out that while normally I am in agreement with our distinguished Judiciary Chairman, I am afraid here that his motion isn't going to help us a great deal because it certainly does not resolve the problem we are faced with in this judiciary article, and I don't know how to solve that; I tried by a motion but that failed, rather the suspension of the rules failed, and as I said before, I don't see how the adoption of Mr. McLaughlin's motion is going to help us in solving the problem that still, I believe, exists in the judiciary article. The McLaughlin motion may help the Style and Drafting Committee in the future -- I don't know about that -- but certainly so far as the judiciary article is concerned, I don't think that it has resolved the question.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I would like to support the motion. If it is adopted it will facilitate the work of Style and Drafting, immeasurably. Beyond that I say there is a solution for Mr. Johnson, and the solution is, if he doesn't want the judiciary article to be subject to action by the initiative or referendum, the way to state that and state it unmistakably is to write it in as one of the restrictions on the use of the

initiative in the initiative article, and if the body wants to do that, that is the place to put it. I am sure, and I think every man and woman here will agree with me, that as we considered these matters on the floor we did not stop to think each time that the use of the term "by the legislature" or "by law" was used whether we were distinguishing between whether a thing would be subject to the initiative or not. We did use those terms interchangeably. I know they were used interchangeably in my own thinking at least as we looked at the proposals before us. There is one other alternative still before us, and that is when we get around to it we may not even adopt the article on the initiative and referendum. I myself am in favor of it; I think it ought to be in the constitution, but to let Style and Drafting get on with its work it would help greatly in that work if we adopt Mr. McLaughlin's motion.

PRESIDENT EGAN: Mr. White.

WHITE: This is a logical sequence and only logical sequence to voting down the motion that I made previously.

PRESIDENT EGAN: Mr. Coghill.

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

PRESIDENT EGAN: You may.

COGHILL: On your proposed amendment, let's just take for an example in your local government article on boroughs would the legislature that provides for the performance of services to unorganized boroughs, would that be "the law shall provide"?

MCLAUGHLIN: That would be "it shall be provided by law".

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: May I ask a question of Mr. McLaughlin? It wasn't your intent to preclude the Committee on Style and Drafting to occasionally use "by the legislature" just for variety, was it?

MCLAUGHLIN: It was not, but if intelligence conflicts with variety I would say that variety would have to go by the board. Mr. Chairman, I might answer one of the objections that came from Mr. Johnson. If Mr. Johnson, after the adoption of this, wants to raise the question immediately as to whether or not the judiciary article is subject to the referendum, he need merely move to strike all the expressions "be established by law" and substitute the word therein "legislature".

PRESIDENT EGAN: The question is, "Shall the proposed motion as offered by Mr. McLaughlin be adopted by the Convention?" All those in favor of the adoption of the proposed motion will signify by saying "aye", all opposed by saying "no". The

"ayes" have it and the proposed motion is ordered adopted. Are there questions with relation to Section 1? Mr. McCutcheon.

MCCUTCHEON: Mr. President, in view of the action that has just been taken by the body, I will move that the judiciary article be sent back to Style and Drafting for further consideration in drafting.

TAYLOR: I second the motion and ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the judiciary article be sent back to Style and Drafting for further consideration in drafting.

SUNDBORG: Is this debatable?

PRESIDENT EGAN: Recommit, is that your motion, Mr. McCutcheon?

MCCUTCHEON: Yes, that is what it amounts to.

PRESIDENT EGAN: Recommit is debatable, yes, it is, Mr. Sundborg.

SUNDBORG: We don't want it back. We have already labored over this for more than two weeks. We have inserted in here "by law". If we get it back that is all we could do, as I can see it.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, it just seems to me that this should be recommitted to Judiciary Committee because they know what they mean in each case, and then it should come out on the floor for adoption. They could consult with Style and Drafting, perhaps.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: When the initiative and referendum article finally comes before us, Mr. Barr, I am quite sure our Committee is going to move an exclusion of the formation and jurisdiction of the courts in the judiciary article, but I think we ought to go ahead and clear this and get it into third reading and take the other up in due course.

PRESIDENT EGAN: The question is, "Shall the report of the Committee on Style and Drafting on Committee Proposal No. 2 be recommitted back to the Style and Drafting Committee for further consideration?" All those in favor of recommitting the proposal to the Style and Drafting Committee for further consideration will "signify by saying aye", all opposed by saying "no". The "noes" have it and the proposal is before us. Mr. Robertson.

ROBERTSON: I move that it be recommitted to Judiciary Branch

Committee.

MCCUTCHEON: I second the motion.

PRESIDENT EGAN: Mr. Robertson moves that Committee Proposal No. 2, seconded by Mr. McCutcheon that the proposal be recommitted to the Judiciary Committee. Mr. Fischer.

V. FISCHER: Point of information. I would like to ask Mr. Robertson why.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, in answer to Mr. Fischer's question, I submitted the first proposal on a judiciary formation, formation of a judiciary and in it I used the words "by the legislature" and "by law" interchangeably, meaning all the time "by the legislature". The Committee adopted the proposal after we had Mr. Davis and Mr. Taylor, and some others made suggestions, and the Committee here today has assured you that it all meant "by the legislature", not "by the law" and in writing in some places we used "by law" instead of "by the legislature". If it is referred back to the Judiciary Committee I am quite confident that in at least 10 instances, as embodied in Mr. Johnson's motion, we will write in the words "by the legislature". That is why I ask for it.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I submit that under the rule just adopted a minute ago, Mr. McLaughlin's motion, that no matter whether the Judiciary Committee did write "by the legislature" in there it would have absolutely no effect on the thing because the body has now adopted a rule that when we say "by the legislature" or when we say "by law" we mean exactly the same thing, so it would be absolutely worthless to commit it back with that in mind. Let's get the show on the road and get this article passed.

PRESIDENT EGAN: Miss Awes.

AWES: I think another reason why it should not be sent back is this proposal came out of Committee and it was adopted by the body. Well, it wasn't adopted by the body, but the body passed on all these sections and evidently approved of them, they quit amending anyway; and I think it has lost its identity with the Committee, and I don't think it should be sent back to them.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: You would have to have a motion to suspend the rules to return it to the Judiciary Committee because it is no longer in second reading so far as the Judiciary Committee is concerned.

It is as far as Style and Drafting is concerned.

PRESIDENT EGAN: Mrs. Hermann, you have a point there. The motion to recommit ordinarily takes a majority vote. However, in all good reason that would mean to recommit to its proper committee. Now if the original motion was to recommit it to the Committee on Style and Drafting which would be proper, and it would only take a majority vote. When the floor received the proposal originally and acted upon it in second reading it took its regular course to the Style and Drafting Committee; that motion would have taken a majority vote. The motion that has now been made to return it to another committee would take a suspension of the rules, and the Chair would rule that your point is well taken. Mr. Taylor.

TAYLOR: I would like to say that Mr. Robertson --

PRESIDENT EGAN: A suspension of the rules, Mr. Taylor, a motion that entails a suspension of the rules is not debatable. We have to vote, and in voting on this motion it would take a two-thirds majority vote to send it back. In order to carry this motion it is, in effect, a suspension of the rules. Mr. Coghill.

COGHILL: Mr. Chairman, I rise to a point of inquiry. I understand that the purpose for recommitting is to change the "law" to "legislature". Was that referred? Well, we have already acted upon that in our assembly here and voted that down.

PRESIDENT EGAN: That is all the more reason, Mr. Coghill, why it would take a suspension of the rules to recommit, but the motion to recommit is in order, but it takes a suspension of the rules.

ROBERTSON: Mr. Chairman, I appeal the decision of the Chair.

PRESIDENT EGAN: Mr. Robertson appeals to the ruling of the Chair. The question is, "Shall the ruling of the Chair be sustained?" The Chief Clerk will call the roll.

BARR: Point of information. Which ruling of the Chair -- that it takes a suspension of the rules?

PRESIDENT EGAN: That is correct, Mr. Barr. The Chief Clerk will call the roll. The question is, "Shall the ruling of the Chair be sustained?"

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

Yeas: 49 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hurley, Johnson,

Kilcher, King, Knight, Laws, Lee, Londborg,  
 McCutcheon, McLaughlin, McNealy, McNees, Marston,  
 Metcalf, Nerland, Nolan, Nordale, Peratrovich,  
 Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog,  
 Smith, Stewart, Sundborg, Sweeney, Walsh, White, Wien.

Nays: 3 - Hinckel, Robertson, Taylor.

Absent: 2 - Hellenthal and VanderLeest.

Abstaining: 1 - Mr. President.)

CHIEF CLERK: 49 yeas, 3 nays, 2 absent and 1 abstaining.

PRESIDENT EGAN: So the ruling of the Chair has been sustained and the question is, "Shall Committee Proposal No. 2 as reported out to the floor by the Committee on Style and Drafting be returned to the Committee on the Judiciary?" The question on the sustaining was whether it takes a two-thirds majority vote to send it back, in effect. The Chief Clerk will call the roll.

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

Yeas: 13 - Barr, Collins, Johnson, Laws, McCutcheon, McNealy,  
 Marston, Nolan, Poulsen, Reader, Robertson, Taylor,  
 White.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Coghill, Cooper,  
 Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer,  
 Gray, Harris, Hermann, Hilscher, Hinckel, Hurley,  
 Kilcher, King, Knight, Lee, Londborg, McLaughlin,  
 McNees, Metcalf, Nerland, Nordale, Peratrovich, Riley,  
 R. Rivers, V. Rivers, Rosswog, Smith, Stewart,  
 Sundborg, Sweeney, Walsh, Wien, Mr. President.

Absent: 2 - Hellenthal, VanderLeest.)

CHIEF CLERK: 13 yeas, 40 nays and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the proposal is still before us. Mr. Sundborg.

SUNDBORG: Mr. President, I move that the rules be suspended and that the Committee on Style and Drafting be instructed to write in as one of the restrictions in the initiative article the matter of establishment and operation of the courts.

ROBERTSON: I second the motion.

PRESIDENT EGAN: The Chief Clerk will please read the proposed motion. Mr. Victor Rivers.

V. RIVERS: Question. Mr. President, is not the motion just a suspension of the rules at the moment?

PRESIDENT EGAN: Of course, if Mr. Sundborg moved that this motion be adopted it would take two-thirds or he could move to suspend the rules. Is there objection to the suspension of the rules?

V. RIVERS: I object.

PRESIDENT EGAN: Do you so move, Mr. Sundborg, that the rules be suspended?

SUNDBORG: I did move. This is the whole motion, do I understand it?

PRESIDENT EGAN: No, just the motion to suspend the rules. Mr. Londborg.

LONDBORG: Mr. President, now could we know for sure why we are suspending the rules? What is the purpose?

PRESIDENT EGAN: Mr. Sundborg, would you state your purpose for suspension?

SUNDBORG: My purpose is to have the body instruct the Style and Drafting Committee to write a substantive change into the article on the initiative and referendum; that change to be that the manner of establishment and operation of the courts become one of the restrictions to which the initiative and referendum may not apply.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I would like to have about a two-minute recess.

PRESIDENT EGAN: If there is no objection the Convention is at recess.

RECESS

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

SUNDBORG: Mr. President, I would like to ask unanimous consent to withdraw my motion.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent that his motion for the suspension of the rules be withdrawn. Is there objection? Hearing no objection it is so ordered. Mr. Victor

Rivers.

V. RIVERS: Mr. President, I will ask unanimous consent that the article we are considering now proceed through the regular channel of business and be referred to the Rules Committee for assignment on the calendar in third reading.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, Style and Drafting has two or possibly three specific amendments that we wish, and there may be other specific amendments, we haven't gotten to that point yet. No one has offered any. We have a couple of amendments of changing a word here and there ourselves.

V. RIVERS: I withdraw my motion.

PRESIDENT EGAN: Are there questions relating to Section 1, relating to the substance of Section 1? Mr. Davis.

DAVIS: Does the body desire me to tell where these sections came from or is everybody thoroughly familiar with them?

PRESIDENT EGAN: What is the desire of the Committee? If there are questions on any of these sections you may direct your questions to Mr. Davis, and he will attempt to answer them. Mr. Ralph Rivers.

R. RIVERS: Point of information. Are we going to question him now purely on the form and the style and drafting involved?

PRESIDENT EGAN: In each section, if you have any question relating to substance or phraseology.

R. RIVERS: I don't think that we are questioning about the substance of these things. I think we are asking him about phraseology unless we wish to challenge them.

PRESIDENT EGAN: Right. Mr. Davis, it seems to be the wish of most of the members that as we go through these sections, if they have questions they will ask you. You did very well in the presentation of the whole article this morning. Mr. Johnson.

JOHNSON: Mr. President, it occurs to me that as a member of Style and Drafting, having attended a meeting that we had during the recess, that it might be well for Mr. Davis, on behalf of the Style and Drafting Committee, to present the two or three minor amendments that the Committee felt should be included and get those out of the way. It ought to expedite things.

PRESIDENT EGAN: Would that be your feeling, Mr. Davis?

DAVIS: I intend to do that except I was going to wait for the particular section, Mr. President.

PRESIDENT EGAN: We have before us at the present time Section 1. Are there any other questions relating to Section 1? Are there questions relating to Section 2? Section 3? To Section 4? To Section 5? Section 6? Does any delegate have a question relating to Section 6, or Section 7? To Section 8? Are there questions or objections to Section 9? To Section 10? Section 11? Mr. Coghill.

COGHILL: Mr. President, there is one question that arose in our hearing on the now Section 10. They wanted to know what the term "incapacitated" might cover. That would cover a multitude of sins, and I would like to ask the Chairman of the Judiciary Committee if he would give a brief explanation of it.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Coghill, in the course of your inquiry you have already described what "incapacitated" covers. It is a multitude of sins and it was deliberately devised that way because of the fact that in most states you discovered that nobody likes to take a removal proceedings on specific grounds where there is a taint of incompetency, or criminality attached to it, so we used the broad general expression, "incapacitated", to take care of all the ills and evils to which judges, like other mortals, are subject. It is a gracious way out of it.

COGHILL: In other words, by this phrase "so incapacitated" he could be incapacitated for being a Republican judge under a Democratic administration.

MCLAUGHLIN: That would not be incapacitated. It might be as someone suggested, bad judgment. (Laughter)

PRESIDENT EGAN: Are there objections or questions relating to Section 11? Section 12? To Section 13? Mr. Hinckel.

HINCKEL: Mr. President, it occurs to me that Sections 13 and 14 are inconsistent. Section 13 says the justices will be paid and 14 says they cannot be paid. Line 16 says that they shall not hold any office of profit.

PRESIDENT EGAN: Mr. Davis.

DAVIS: We have got that taken care of, Mr. President. Are we on Section 14 now?

PRESIDENT EGAN: We might consider them both together inasmuch as Mr. Hinckel raised the question.

DAVIS: Section 14, the Committee proposes adding the word

"other" in line 16 after the word "any" and I ask unanimous consent for the insertion of that word.

PRESIDENT EGAN: Is there objection to the unanimous consent request?

TAYLOR: I object.

PRESIDENT EGAN: Objection is heard. Do you so move, Mr. Davis?

DAVIS: I so move.

JOHNSON: I second the motion.

PRESIDENT EGAN: Mr. Johnson seconds the motion. The motion is open for discussion. Mr. Taylor.

TAYLOR: Mr. President, my objection is that I don't think there should be any ambiguity in this whatsoever. It says that they cannot hold an office in the political party, or hold any office or position of profit under the United States -- being a state judge is not holding an office under the --

DAVIS: The difficulty is the next word -- the "State".

TAYLOR: It says "while holding office".

DAVIS: Mr. President, I might say that was why it was left out at first. We figured that if a man was holding office obviously he was holding office and we did not need the word "other". But on going over it again since there was a possible ambiguity we thought the "other" ought to be put back in.

TAYLOR: I will withdraw my objection.

PRESIDENT EGAN: Is there objection to the unanimous consent request of Mr. Davis? If there is no objection, the proposed amendment is ordered adopted. Mr. Davis.

DAVIS: Mr. President, in the same section, in line 19, the Committee proposes to add the word "another" at the end of the line so it would read, "Any Supreme Court justice or Superior Court judge filing for another elective public office..." Now the reason for leaving it out in the first place was that we felt that, strictly speaking, these offices were not elective positions. It is true we held elections to determine whether they were retained or not, but they were appointments in the first place, so we felt there was no ambiguity, but after discussing it with some of the other committee members again, we felt that to make assurance absolutely sure here that the word "another" should be inserted, and on behalf of the Committee I ask for unanimous consent to place the word

"another" at the end of line 19.

PRESIDENT EGAN: Unanimous consent is asked for the adoption of the amendment. Is there objection?

R. RIVERS: I object.

PRESIDENT EGAN: Objection is heard. Do you so move, Mr. Davis?

DAVIS: I so move.

JOHNSON: I second the motion.

PRESIDENT EGAN: Mr. Johnson seconds the motion. Mr. Ralph Rivers.

R. RIVERS: I would like to state the grounds of my objection. We based this on the Missouri Plan which is the nonpartisan appointment of judges. Since they are appointed in the first place through a screening process, through the judicial council, an appointment by the governor, with the confirmation by the senate; they go to the people for either rejection or approval for another term, but I don't think we can refer to them as elective positions. They are not in partisan elections. I think it makes the ambiguity worse if we stick the word "other" in at that point.

CHIEF CLERK: The word is "another".

R. RIVERS: I just don't think the judges are in another elective position or in any kind of elective position at all. They are under the nonpartisan appointment of judges. The Missouri Plan runs through here, and we actually had the title "nonpartisan appointment of judges", and Style and Drafting knocked it out because they thought it was so self-explanatory in the article they did not want to take up a line for that kind of a heading, so I object. I think we just don't want to throw the implication in here that they are elective offices.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Would the word "any" satisfy your objection, Mr. Rivers?

R. RIVERS: I think so. Wait until I think -- where are we here? "For any elective position" would certainly make it all right.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: I am opposed to Mr. Davis's suggested amendment because I think it gives the implication or the courts to construe

occasion where it might consider the supreme court justices and the superior court judges elective positions, and I don't think we should put in the word "another" there.

R. RIVERS: Mr. Robertson, would it be all right if we said "any elected"?

ROBERTSON: Yes. I would agree to "any".

R. RIVERS: Would that be all right with Style and Drafting?

NORDALE: What are you going to do when he files his declaration of candidacy for judge?

R. RIVERS: That is approval or rejection; that does not make it an elective office.

DAVIS: There is nothing in the section that says he cannot file for another partisan election. Now I agree with what both

Mr. Rivers and Mr. Robertson said, this is not an elective office. However, since there seems to be a possibility of ambiguity, certainly it must be because the Committee was unanimous in saying the word ought to be there. For that reason I move its adoption. Along that line, if I understood Mr. Rivers correctly, I thought he said that judges were approved by the legislature. Now if I misunderstood him, I shouldn't raise it. If I did not misunderstand him, that is not the way things work here.

R. RIVERS: I may be mistaken about that. It is just the screening and appointment by judicial council and the appointment, is it not? I am sorry I was in error on that statement.

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. Are there any other questions or suggestions for Section 13 or 14? Is there objection to not having had a roll call on these particular amendments? Prior to this time there had been no objection, but it should be by roll call to show a two-thirds majority, but if there is no objection for the adoption of any amendment at this time --

DAVIS: These are amendments for style only Mr. President. I doubt that they require only a two-thirds vote.

PRESIDENT EGAN: You consider them for style only?

DAVIS: Yes. A matter of phrasing only.

PRESIDENT EGAN: Are there questions or suggestions for Section 15? For Section 16? For Section 17? Mr. Davis.

DAVIS: Mr. President, Section 17, as I pointed out this morning, is put in at the end of this article so it can be considered elsewhere, and on behalf of the Committee on Style and Drafting, at this time I would request that Section 17 be referred to the miscellaneous articles and taken from the judicial section.

PRESIDENT EGAN: Mr. Davis asks unanimous consent that Section 17 be taken from this proposal and placed in the miscellaneous provisions. Is there objection? Hearing no objection it is so ordered and the Section 17 will be included in the miscellaneous provisions that are now in Engrossment and Enrollment; is that what you would desire, Mr. Davis?

DAVIS: I think we preferred that the matter come back to Style and Drafting again because this is going to keep coming up in connection with other proposals, and we want to get the language the same in all of them.

PRESIDENT EGAN: Then, if that is your desire, your unanimous consent request would include that the section be sent back to the Style and Drafting Committee.

DAVIS: Apparently I was in error. The Secretary and Chairman both tell me we intended this to go to Engrossment.

PRESIDENT EGAN: Is there objection to sending it to Engrossment? Mr. Victor Rivers.

V. RIVERS: I was just going to ask a point of information, and that was on Article 12 which we acted on last night, which was a miscellaneous provision. I wonder if in referring that to Engrossment and Enrollment we might not have held it open for such miscellaneous provisions. Did we do that?

PRESIDENT EGAN: Mr. Rivers, as the Chair remembers our action this morning, the Engrossment and Enrollment Committee was instructed by the body to hold that in their possession until all these provisions would be in their hands so they could include it in their final report from Engrossment and Enrollment.

V. RIVERS: That answers my question, and I understand there will be three or four perhaps, of just such items.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I ask unanimous consent that the number of Section 17 be changed by the Enrollment and Engrossment Committee to an appropriate number in order in that miscellaneous provision article. I might say, too, that all of these will come back to Style and Drafting because after that article is out of Engrossment and Enrollment it comes to us next.

PRESIDENT EGAN: It will take its regular course to Style and Drafting. Are there other questions with relation to Section 18? Mr. Davis.

DAVIS: Mr. President, so far as Section 18 is concerned, we intended that as a transitory provision. We intended, also, to lift that from the judicial section and, am I correct, we want this to come back to Style and Drafting? I would move then at this time that Section 18 as written be taken from the judicial article and be transferred to the committee concerning or considering transitional measures.

PRESIDENT EGAN: Unanimous consent is asked that Section 18 be taken from this article and referred to the committee that is handling the transitional measures. Is there any objection? Mr. Victor Rivers.

V. RIVERS: Point of information. Mr. President, where an article is so transferred, the substance has been passed and approved, and I understand that it then does not come up for reconsideration by the body. Do they do any changing in ordinance and transitory provisions?

PRESIDENT EGAN: Well, now the question there would be when it is sent, as Mr. Rivers raises the question, it is referred to the committee handling transitional measures, and it will come back to us among the proposals that they will present for our consideration here, but can they change this? We are sending the proposal to that committee for its consideration. Mr. Victor Rivers has raised a question. We have already acted on this in second reading. Mr. Victor Fischer.

V. FISCHER: Could I make a suggestion? Possibly this could be referred to Engrossment and Enrollment to hold until the remaining transitory provisions reach that Committee.

V. RIVERS: I can see a question in connection with the limiting or not being able to change it somewhat in transitory provisions because they might want to consolidate two or more slightly different points. I will withdraw my request for information.

PRESIDENT EGAN: All right, Mr. Rivers, then if there is no objection the section is ordered referred to the committee considering transitional measures. Mr. McNealy.

MCNEALY: Point of personal privilege for just about 15 seconds.

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

(Mr. McNealy spoke on personal privilege at this time.)

PRESIDENT EGAN: The Convention will come to order. What is the

pleasure of the body as regards Committee Proposal No. 2? Mr. Davis.

DAVIS: Mr. Chairman, unless there are some objections I would move that the report of Style and Drafting on the Judiciary Proposal No. 2 be approved.

PRESIDENT EGAN: Mr. Davis moves for the approval of the report of the Committee on Style and Drafting. Is there objection? Mr. Ralph Rivers.

R. RIVERS: Just momentarily, the rules say after a proposal is "accepted" instead of "approved".

PRESIDENT EGAN: The Chair has been looking for the rules. He does not have the proper wording there if it is "accept".

DAVIS: I will change it to "accept".

PRESIDENT EGAN: Mr. Davis asks unanimous consent that the Convention accept the report of the Committee of Style and Drafting. Mr. Robertson.

ROBERTSON: Point of information. Does that prevent the amendment of these words "by law" to "by the legislature" either directly or by implication through another provision such as Mr. Sundborg a few minutes ago suggested?

DAVIS: Mr. President, as I understand it now, the next step is third reading where that provision can be made.

PRESIDENT EGAN: That is correct. When we get into third reading, Mr. Robertson, the proposal will be open for direct debate on any portion of it by any delegate and a motion for specific amendment could be made in third reading for sending it back to second reading for specific amendment. If any delegate wished to do so, it would take a two-thirds majority vote at that time of course, to return it to second reading for specific amendment. Mr. Victor Rivers.

V. RIVERS: Mr. President, I will now move and ask unanimous consent that we adjourn until 9:00 o'clock Monday morning subject to committee announcements.

PRESIDENT EGAN: Mr. Victor Rivers moves and asks unanimous consent that the Convention adjourn until 9:00 o'clock Monday morning subject to committee announcements.

COGHILL: I object.

V. RIVERS: I so move.

JOHNSON: I second the motion.

COGHILL: Mr. President, if I might have the floor on personal privilege for a moment, for a couple of minutes.

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

JOHNSON: Point of order. There is a motion before the house.

PRESIDENT EGAN: You are correct, Mr. Johnson. Committee announcements are all that the Chair can allow you.

COGHILL: Under committee announcements your Committee on Administration is coming out with a proposal in regard to the closing ceremonies of the Convention, and we had intended to bring this before the body after our coffee break this afternoon, and that is the objection for the adjournment at this time. It is being prepared.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: In the event the motion carries, the Committee on Ordinances will meet immediately upon adjournment.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: In the event the motion carries, the Committee on Ordinances will meet immediately upon adjournment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: The Committee on Style and Drafting will meet immediately upon adjournment, if we adjourn.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Are we to understand that we are through with Committee Proposal No. 2 and that it has been referred to third reading?

PRESIDENT EGAN: It will automatically move into third reading if we adjourn, Mr. Doogan; it is the understanding of the Chair. Mr. Davis made a motion to accept the report of the Committee on Style and Drafting; it was never voted on. He asked unanimous consent and Mr. Robertson objected, then Mr. Victor Rivers asked a question; and then a motion was made for adjournment. We have the motion for adjournment before us. Mr. Kilcher.

KILCHER: If this motion should fail, is there any work before us available for the rest of the day?

PRESIDENT EGAN: We have the report from the Committee on Administration or further action on this report, but because of the fact that Mr. Davis's motion would still be pending and we have not accepted the report of the Committee on Style and

Drafting, Committee Proposal No. 2, we would still be in this same position when we would convene on Monday morning if the adjournment carries. The question is, "Shall the Convention stand adjourned until 9:00 a.m. on Monday?" All those in favor of the adjournment motion will signify by saying "aye", all opposed by saying "no". The "noes" have it and the Convention is still in session. We have before us the motion by Mr. Davis to accept --

SUNDBORG: I second the motion.

PRESIDENT EGAN: Mr. Sundborg seconds the motion. The question is, "Shall the report of the Committee on Style and Drafting with reference to Committee Proposal No. 2 be accepted by the Convention?" All those in favor -- Mr. Robertson.

ROBERTSON: Mr. President, much as I respect Mr. Davis's good judgment, I hope that the delegates will turn this down. I think this is a very important matter to get straightened out before we get into third reading as to whether or not this court system is going to be nonpartisan, nonpolitical, and I can't believe but what we are injecting the initiative and referendum into it, that we convert away from being an independent, nonpolitical judiciary. I hope they turn it down for that reason so we can think it over until Monday morning.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I think Mr. Robertson's concern is in regard to a substantive change, and as far as the Committee on Style and Drafting is concerned, it has no authority. It will still be in the position of being subject to change by the whole body on a substantive matter and will have to be returned to second reading to do it.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I might be inclined to agree with Mr. Robertson but it seems to me that regardless of whether we say "by law" or "the legislature" through this article, as matters stand now, it makes no difference whatsoever. The place to correct it is in the article on the initiative and referendum.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, in supporting Mr. Davis's motion, I want to point out, too, that I expect to support a motion to exclude the creation and the operation of courts from the initiative and referendum when that measure comes before us, Mr. Robertson.

PRESIDENT EGAN: Did we not vote on Mr. White's motion that would

accomplish that? We voted it down.

R. RIVERS: I know, but we took Mr. McLaughlin's expression of intent and saying that if we do decide to exclude anything from the initiative and referendum we will so state in the article on the initiative and referendum.

PRESIDENT EGAN: The question is, "Shall the proposal of Style and Drafting Committee with relation to Committee Proposal No. 2 be accepted by the Convention?"

POULSEN: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll on the question.

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

Yeas: 48 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nordale, Peratrovich, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, White, Wien, Mr. President.

Nays: 5 - Kilcher, McCutcheon, Nolan, Poulsen, Robertson.

Absent: 2 - Hellenthal, VanderLeest.)

KILCHER: Mr. President, I would like to change my vote to "no".

PRESIDENT EGAN: Mr. Kilcher changes his vote to "no".

CHIEF CLERK: 48 yeas, 5 nays, and 2 absent.

PRESIDENT EGAN: So the report of the Committee on Style and Drafting with relation to Committee Proposal No. 2 has been accepted by the Convention. Mr. Victor Fischer.

V. FISCHER: Mr. President, before we have any more motions for adjournment or recess, I would like to address a question to the Chairman of the Rules Committee, if I may.

PRESIDENT EGAN: If there is no objection.

V. FISCHER: I wonder what is next on the calendar before us, aside from the report of the Administration Committee?

PRESIDENT EGAN: Mr. Riley.

RILEY: This afternoon we have only Ordinance 16 which was referred to Rules a few minutes ago and Style and Drafting Committee Proposal No. 2 is now in third reading.

PRESIDENT EGAN: Do we wish to proceed with the report of the Administration Committee at this time? Mr. Coghill.

COGHILL: Mr. President, it would be better I think if we had a coffee break recess, because I don't think the boiler room is done with our report, the mimeographing of it yet.

PRESIDENT EGAN: Should we continue with this proposal in third reading also? What is the pleasure of the body? If there is no objection the Convention will stand at recess until 3:45.

#### RECESS

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

HERMANN: Mr. President, we have with us today Mr. H. G. Pope, who is Executive Director of the Public Administration Service which produced our constitutional studies, and Mr. Pope is here at the invitation of the Alaska Statehood Committee to confer with them at their meeting tomorrow, the Executive Board meeting, in regard to studies and with regard to transitional government and I would like to have Mr. Pope come forward and meet the group and have a few words to say to us.

PRESIDENT EGAN: Mr. Pope, would you come forward, please? (Applause)

POPE: It is, of course, a great pleasure to be in Alaska, and it is, of course, a particular privilege to observe a constitutional convention, a first constitutional convention, the kind of meetings that happen rather infrequently nowadays. It occurs to me that you might be interested in a couple of the staff members who were here before and from whom I have very specific instructions, and that apparently all of you ladies and gentlemen that were very kind to them when they were here. You may remember that we suffered a couple of casualties in connection with our service here. Both John Corcoran and Joe Molkup returned to the office for work this week after their long disabilities and both asked very specifically to be remembered to you in terms of their deep appreciation for the wonderful experience they had for you and their great respect for the work that the Convention was doing and their very best wishes in connection with this. Now if you will allow me, I will go back and observe how this works.

PRESIDENT EGAN: Thank you, Mr. Pope. (Applause) Mr. Coghill.

COGHILL: Mr. President, at this time, I would like to ask that

we revert to the report of committees.

PRESIDENT EGAN: If there is no objection, the Convention will revert to the order of business of reports of committees. Mr. Coghill.

COGHILL: Mr. President, your Committee on Administration, for the past two or three days, has been considering the program for the signing of the document and for the closing ceremony. We have arrived at two or three of the basic things that we will have to consider and at this time I would like to report to the Convention on them and for their consideration. First of all, the Committee on Administration took up the proposition of what time we should have the ceremonies and it was tentatively arrived at that we should set 2:00 p.m., Sunday, February 5, as the time for the ceremony to take place. We are recommending to the Convention that the place be the University gymnasium. We believe for the reasons that the gymnasium is larger than our Convention hall here; that we opened the Convention at the University gym; it is on the campus; we do not believe that we should leave the University campus for the signing ceremony; and we thought that the balcony would afford a better view for television cameras, radio, and press coverage. The Committee on Administration has recommended that a letter be sent to each of the 50 governors, the 48 states, Hawaii and Puerto Rico, inviting them to attend our ceremonies. We recommend that a formal invitation be printed in the number of 3,000, that this invitation be sent to all Territorial and Federal department heads and public officials and that they be distributed individually among the delegates to the extent of 10 to

25. Now we have many reasons for these three items being pressing; one being that time is of essence as we only have two weeks left; the other is that there is program planning; planning in the University faculty to provide for the gymnasium, and the Fairbanks daily paper is contemplating a full edition to the Constitutional Convention at that time. These things, I feel should be settled today so that we can start the program working over the weekend. So with the pleasure of the President, we would like to submit first, the time of the ceremonies and get the approval of the Convention as to 2:00 p.m., Sunday, February 5.

PRESIDENT EGAN: What is the pleasure of the Convention with relation to the time as recommended by the Committee on Administration? Is there discussion of the proposed time? Mr. Fischer.

V. FISCHER: What exactly will we be signing? (Laughter)

PRESIDENT EGAN: The Convention will come to order.

V. FISCHER: Will the whole document be finished by that time? Is that guaranteed?

COGHILL: Mr. President, your Committee on Administration has absolutely no control over that. We are taking the interpretations of the law that provides that one original and four more originals be signed by this Convention. We hope to have six documents signed, five of them will be in type and one will be in scroll on parchment. We felt that these three essential programs would be set up now and by Tuesday or Wednesday of next week, we should be able to line up the whole program.

PRESIDENT EGAN: Before we proceed, would the Sergeant at Arms find out if there are any other delegates in the building. Mr. Coghill, you may proceed.

COGHILL: That is all, if that answers the question.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I move that we accept the recommendation of the Administration Committee as to the time and that the ceremony for signing the document be held on Sunday, February 5, at 2:00 p.m.

HERMANN: I'll second that.

PRESIDENT EGAN: It has been moved by Mr. Sundborg, seconded by Mrs. Hermann, that the time for signing the document be set for 2:00 p.m. on Sunday, February 5. Is there discussion of the proposed motion?

R. RIVERS: I'll ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that that be adopted as the time that the Convention will meet for signing the final document. Is there objection? Hearing no objection, it is so ordered. Mr. Coghill.

COGHILL: Mr. President, to expedite the program, I will move and ask unanimous consent that the University gymnasium be the place of the program.

PRESIDENT EGAN: Mr. Coghill moves and asks unanimous consent that the University gymnasium be the place where the ceremony will be held. Mr. Sundborg.

SUNDBORG: I will object, temporarily. I would like to ask Mr. Coghill whether further consideration of this was had by his Committee following this afternoon's meeting of the committee chairmen where an alternate proposal was discussed.

COGHILL: No, it was not. We had talked about the gymnasium in town, we had talked about the gymnasium out here at the University, and we had talked about our Convention room here in the plenary session hall. However, we felt that this room

was too small to get adequate coverage, not only by the public but by the press, television cameras, and radio.

SUNDBORG: I do object then. I feel it should be held here.

PRESIDENT EGAN: Do you so move, Mr. Coghill?

COGHILL: I so move.

PRESIDENT EGAN: Mr. Coghill so moves. Is there a second to the motion?

KILCHER: I'll second it.

PRESIDENT EGAN: Seconded by Mr. Kilcher that the ceremony be held in the University gym. Is there further discussion of the subject? Mr. Sundborg.

SUNDBORG: Mr. President, I feel that the place to hold this ceremony is in this building, preferably in this chamber and if not here, in one of the rooms upstairs. One reason that I feel that this is the appropriate place is that this is the familiar surrounding in which we have worked and drafted this constitution and it seems only appropriate that we have it here. Further than that, there is a movement on foot to name this building Constitution Hall and I believe that we should sign the constitution in this hall. I also think that if we held the ceremony right here we could accommodate several hundred people in the ping pong room, and some hundreds in the gallery here, perhaps others in the rear of the room. We don't have to have the tables; definitely, we won't have them if we meet in the gym and if we moved them upstairs and move the delegates forward a little bit, I think we could possibly get several hundred right in the confines of this room. In addition to that, this room was all wired for sound it would be possible to take care of probably several thousands in the room upstairs who could hear if they could not see the ceremonies, in case there should be that many on hand. I really think it is a more appropriate place than the gymnasium.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President, I am just a bit worried about Mr. Sundborg's estimates of hundreds in here and hundreds in there and thousands up there. Are you referring to the little people?

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the subject? Mr. Doogan.

DOOGAN: I am in a way leaning like Mr. Sundborg does and probably the proper place to sign this document is here but I got to thinking about it and I believe that the larger space on the campus should be utilized and I think that probably the

gymnasium should be the place and this is the reason: we have been sent here by the Territory of Alaska and when we get through I think that as far as the people of Alaska are concerned, this is going to be quite a momentous occasion for them and I feel that many of them would at least like to be in on the signing of it, at least the witnessing of it, anyhow, and there is not going to be too many of them that are going to be able to get in here to watch it and to many people it is going to mean quite a little and though I feel that we have done all our work here and that this will possibly be named Constitutional Hall, I think that we should give some consideration to the public on the day that the document is signed.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, maybe it would satisfy Mr. Sundborg if we came over here and signed at least one copy in this building. Had anyone thought of that?

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Mr. President, it seems to me that this hall can still be called Constitution Hall by the fact that we have worked here, regardless of whether we signed the constitution here, but I believe as Mr. Doogan does, and of course as the Committee felt, that we should have the place that could hold the most people.

PRESIDENT EGAN: Mr. Walsh.

WALSH: Could I ask Mr. Coghill if he conferred with the President of the University about whether he had any suggestions that he might make?

COGHILL: The President of the University has extended his desire to the Convention that any of the services that the faculty can render or provide for the closing ceremonies are at our command which has been throughout the Convention, as such. Does that answer your question?

WALSH: Yes, thank you.

PRESIDENT EGAN: Miss Awes.

AWES: Mr. President, it was suggested at the chairmen's meeting this noon that there might be an engineer or somebody connected with the University that could give us a reasonably close estimate as to how many people we could seat in this area if there was some rearrangement. Has anything been done about that?

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Not yet, no.

AWES: I think if we had some idea of how many we could get in here before we vote on this --

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I can get those figures. If I may, the Committee on Administration was not sold on the idea of not having it here but the reason why we suggested the University gymnasium: it would still be on the campus; we felt that we had our opening ceremonies there; we could accomodate more people over there; with the visitors that are coming to Fairbanks to see this historical occasion could witness it and there would be plenty of room over there for accomodations, where here they would be crowded and a lot of them wouldn't be able to be an eyewitness of it.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Should the plans of the Administration Committee be approved and an important outside speaker come from the states for this particular occasion this would hardly be a large enough room. That was not definitely discussed today but should that occur I know that there are going to be hundreds of people from town that will want to come out, not only for the signing ceremony but to hear that speaker. We have a responsibility to the people that sent us here and there are going to be a lot of people who will want to see this thing and I don't believe that even crowding people into these facilities will help the situation, much less to handle radio, television and the press.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, might I inquire who the outside speaker will be, or who they have contacted?

PRESIDENT EGAN: Could you answer that, Mr. Hilscher? Mr. Doogan.

DOOGAN: Before he answers that, I would like to make a statement that I don't care who the outside speaker is. This is not an occasion for an outside speaker. If we are going to have a speaker, it should be somebody from Alaska.

COGHILL: Mr. President, there has been no definite program set up as to outside speakers and the Committee on Administration has not decided one way or the other about having a speaker. The program has been mulled around in the Committee but we have not definitely settled on anything like that yet, so I don't think that has any bearing on the fact of the place.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I will withdraw my objection to the place as suggested by the Committee.

PRESIDENT EGAN: Is there further discussion? The question is, "Shall the University gymnasium be the place where the Convention will hold its closing ceremony?" All those in favor of the University gym as the place for the closing ceremony will signify by saying "aye", all opposed by saying "no". The "ayes" seem to have it. Mr. Coghill.

COGHILL: Mr. President, the third thing that the Committee on Administration would like to have aired, and approved or disapproved if it is the will of the Convention, is the fact of the printing of formal invitations; and the Committee has tentatively agreed that there should be 3,000 of these invitation cards printed and we suggest to the Convention that they be sent to all Territorial and Federal department heads in Alaska and to the states and all public officials and for the use of delegates for sending to their constituents in their areas and, also, to each congressman and to each senator. Now, that would take about 3,000 printed invitations and we would like to get the views of the delegates on that matter.

PRESIDENT EGAN: What is the pleasure of the delegates as to that suggestion? Mrs. Hermann.

HERMANN: I move that we accept the report of the Committee in that respect.

PRESIDENT EGAN: Mrs. Hermann moves that the report of the Committee be accepted in that respect. Is there discussion? Mr. Doogan.

DOOGAN: Before we vote on this I would like to hear a little more discussion on it.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. McNees, I'll yield to you.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I was just going to make a referral of cost on the invitations, the printing cost. The cost of the invitations to us would be less than \$150.

PRESIDENT EGAN: Is there further discussion? Mr. White.

WHITE: I can't think of any better way to spend \$150.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I might add that we have gone to the Commercial Printing Company down at the News Miner and they will print 1,000 of these cards and they are very nice print and they will look very nice -- for \$60 per 1,000. That is for 1,000 but I imagine that they will decrease by getting 3,000 and this will allow each delegate to have from 10 to 25 for their own personal use to send to friends and neighbors.

PRESIDENT EGAN: Is there further discussion? Mr. Doogan.

DOOGAN: I don't object to the 3,000 invitations or the cost, but there is one thing that comes in here and maybe I'm sticking my neck out. I can see inviting the governor and his assistant but as to sending out a formal invitation to all Territorial officials to be here, it would appear to me that that is setting them apart from the general public and is not quite the right thing to do; and it seems to me they would be included other than the governor and his secretary, would be included in the general provision for the public to be here. After all, they are the servants of the people, such as we happen to be at the moment, and I don't believe they should be set apart any more than the general public is. One other question, though I have no objection to the invitations being printed by the Commercial Printing Company, I just want to ask the Committee, was the other firm considered so that we will get no repercussion on that?

PRESIDENT EGAN: Mr. Coghill.

COGHILL: We have not contacted any company as to ordering them yet. We just had to have some sort of price. We went to them because the other company had printed the stationery and we thought that would be a good division point. I might also mention that a public invitation will be in the paper for the public to attend. It is not going to be just exclusively to the people that receive the invitations. It will be a blanket invitation and will be placed in the newspapers.

PRESIDENT EGAN: Is there objection to the acceptance of that part of the Committee report that deals with the invitations being sent out? Hearing no objection that portion of the report is ordered adopted. Mr. Coghill.

COGHILL: One more phase and then we are through. The Committee on Administration thought that it would be nice to send each of the governors of the 48 states and the two territories a letter, not an invitation, just a plain formal invitation, but a letter inviting them to attend our closing ceremonies or our signing of the document. We have that form letter now placed on the Secretary's desk and if this is approved, those letters will go out Monday morning.

PRESIDENT EGAN: Is there discussion of that part of the

committee report? Is there discussion? Mr. Boswell.

BOSWELL: Could we have the letter read?

EGAN: Is the letter available at this time? Will the Sergeant at Arms get the letter? Mr. Johnson.

JOHNSON: Is there any expense involved in this matter?

COGHILL: There would be about 50 air mail stamps, 50 pieces of stationery, 50 envelopes, and possibly two or three hours time of one of the typists.

PRESIDENT EGAN: Is there objection to that part of the committee report? Mr. Doogan.

DOOGAN: I guess I'm really getting into this. It appears to me that invitations to all of the senators, all of the governors, though it is quite proper, if something were to happen and all of them were to show up here, we would probably have to take this ceremony to Eielson Field in order to include everybody. I am just wondering how far you are going to go with this. Though I can appreciate the impact in inviting the governors and the senators, let's not forget that this ceremony is for Alaska and the people that sent us here. Let's be sure that we give them proper consideration before we expand this thing to the magnitude that we can't handle it.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I might assure Mr. Doogan his fears are not alone -- I had the same -- but after talking it over with the Committee and with Tom Stewart, the Secretary, with the time so short, why I don't imagine we will have too many of the Congressmen or the Senators showing up and it is a matter of spreading good will from Alaska throughout the states, people that we are going to have to look to to admitting us to the Union.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I would like to take this occasion to speak on the question before us but in a little broader terms. The reason for holding a constitutional convention is to prepare the way for statehood. The correlation of that is to hasten the day when we will obtain statehood. It has concerned me very much since the opening day of this Convention that we have possibly been overlooking a golden opportunity for promoting the cause of statehood because of the occasion of this Convention. And it appears to me that anything the Administration Committee or anyone else can come up with in this connection that will impress upon the people of the United States our desire for statehood, make them aware of what we are doing, is all to the good, and I hope that they will take this merely

as a starting point and go on from there. Should all the 48 governors see fit to show up, all the United States Senators and the Congressmen, up to and including the President, I think it would be the best thing that could happen.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, could I inquire if the President of the United States has been included in that? I haven't heard him mentioned this afternoon.

COGHILL: Yes, he would be included, not in the letter, but just in the printed invitations.

LONDBORG: I see. I was wondering if it wouldn't be fitting to send him a letter, also. Sort of follow up that telegram that was sent awhile ago.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, may I direct a question through the Chair to Mr. Coghill?

PRESIDENT EGAN: You may, Mr. McNealy.

MCNEALY: In light of Mr. Doogan's objection, would the Committee consider sending these out by regular mail, three-cent stamps and they will receive -- (Laughter)

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

COGHILL: Do I have to answer that?

PRESIDENT EGAN: What is the pleasure of the Convention as regards to these letters?

COGHILL: I have the letter, Mr. President.

PRESIDENT EGAN: Would you please read the letter, Mr. Coghill.

(Mr. Coghill read the sample letter that was to be directed to the governors of the 48 states and two territories.)

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: This is a small matter but I am slightly puzzled by that "humility mixed with pride". I wonder if --

PRESIDENT EGAN: Mr. Kilcher, the Chair would like to say that he didn't write the letter. (Laughter) Mr. Doogan.

DOOGAN: Mr. President, I didn't raise an objection to anything

that the Administration Committee has done. The one thing that I am concerned with is that this thing doesn't get to the point where we can't handle it. I have been mixed up in a few clambakes myself, and I have seen them get to the point where they have reached the exclusion of the people that are most concerned with it, and that is what bothers me; and if you fix this ceremony up so that you exclude the general public of Alaska, not by not inviting them, but by having so many other people here that they can't get in and see what is going on, you are going to cause a great deal of resentment. I have seen it happen before; I would hate to see it happen here because we need all of the support we can get from the people of Alaska to make our position strong before the Congress of the United States.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, may I say that we still have several copies to sign and we can go through in shifts if we get that many people. I think it would be wonderful.

HURLEY: Question.

PRESIDENT EGAN: The question is, "Shall the Convention adopt that part of the committee report that seeks to send a letter to the 50 governors in the United States and its territories?" Mr. Kilcher.

KILCHER: Mr. President, it comes to my attention that since Congress is in session these days, I wonder whether it might not be shooting too high or bordering to the ridiculous, almost, to send these invitations?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: All those in favor of adopting that part of the committee report signify by saying "aye", all opposed by saying "no". The "ayes" have it and that part of the committee report is adopted. Mr. Sundborg.

SUNDBORG: Mr. President, I would like to suggest that on the end of the letter that the President will send, that he request that these governors, if they intend to come or are going to come, to notify us so that we can be prepared and will know how many are coming and can make some publicity use of the fact that "Governor so-and-so" will be here. My own belief is that we will have very few, if any, governors and we will certainly have no Congressmen here, but I believe it is a good public relations effort which you have outlined.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I suggest that before the President

signs the letter that he submit it to Style and Drafting and strike "humility".

PRESIDENT EGAN: If there is no objection it will be referred to Style and Drafting. (Laughter) The Convention will come to order. Mr. Coghill.

COGHILL: Mr. President, that is the extent of our committee report at the present for the closing ceremony. We will have the remainder, possibly by Wednesday of this coming week.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: Mr. President, subject to committee announcements, I move that we adjourn until 9:00 o'clock Monday morning.

PRESIDENT EGAN: Mr. Boswell moves that the Convention stand adjourned until 9:00 a.m. on Monday. Are there committee announcements? Mr. Sundborg.

SUNDBORG: Mr. President, the Committee on Style and Drafting will meet immediately upon adjournment at the rear of the gallery.

PRESIDENT EGAN: The Committee on Style and Drafting will meet immediately upon adjournment in the gallery. Mr. McNealy.

MCNEALY: Mr. President, the Committee on Ordinances will meet immediately upon adjournment, just long enough to set a time for a meeting tonight and tomorrow afternoon, and I want all the members of the Committee.

PRESIDENT EGAN: Ordinances immediately upon adjournment. Are there other committee announcements, if we adjourn? The question is, "Shall the Convention stand adjourned until 9:00 a.m. on Monday?" All those in favor of adjournment will signify by saying "aye", all opposed by saying no. The "ayes" have it and the Convention stands adjourned.