

ALASKA CONSTITUTIONAL CONVENTION

January 9, 1956

FORTY-EIGHTH DAY

PRESIDENT EGAN: The Convention will come to order. We have with us Father Boileau of the Immaculate Conception Church. Father Boileau will give our daily invocation.

FATHER BOILEAU: Grant us, Almighty God, the gift of wisdom and understanding; give us Your help this day that we may continue to work with sincerity, with true charity and harmony, for the good of our country and for Your glory, through Christ our Lord. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: All present.

PRESIDENT EGAN: A quorum is present. We will proceed with the regular order of business. The Chair heard someone wonder whether we had a gavel or not. The Chair would like to state that the gavel is locked up in the President's desk and the keys are not here. We will proceed without the gavel today. Does the special Committee to read the journal have a report to make at this time?

KNIGHT: The journal for the 43rd day has been checked for errors and omissions. We do not find anything. We ask unanimous consent that it be adopted.

PRESIDENT EGAN: Mr. Knight asks unanimous consent that the journal of the 43rd Convention day be approved. Mr. Boswell.

BOSWELL: I note on page 9 it shows one person voting both "yea" and "nay".

PRESIDENT EGAN: Would you ask that that correction be made?

BOSWELL: I will.

PRESIDENT EGAN: The correction will be ordered made as the Chief Clerk might find it to be. If there are no other corrections, the journal of the 43rd day is ordered approved. The Convention will come to order. Are there any petitions, memorials or communications from outside the Convention? Are there reports of standing committees? Mr. Sundborg.

SUNDBORG: Mr. President, as Chairman of the Style and Drafting Committee, it gives me great pleasure this morning to introduce

to you a man who has come to assist us and who will remain until the end of the Convention, if that is the desire of the Convention. He is Dr. John Bebout, Assistant Director of the National Municipal League in New York City, and will be working principally with our Committee but will also be available to give such assistance as other committees may desire. Mr. Bebout is, as he says, a generalist rather than a specialist in the problems of state government and is also something of a specialist in the problems of local government. I would like to suggest that Dr. Bebout be invited to come forward from the gallery and to address the Convention briefly, if that is his desire.

PRESIDENT EGAN: If there is no objection, Mr. Bebout, we are happy to have you here and would like to have you deliver a few remarks.

DR. BEBOUT: Well, I am sure that the proper function for a consultant is to be seen and not heard, at least very loud, so I will be very brief, but I do take great pleasure in this opportunity and privilege of being here with you. It takes me back some years ago and to the eight-year struggle to get a new and modern constitution in my own State of New Jersey. I played various modest roles in that connection from the time that Governor Edison advocated the calling of a convention in his inaugural address in 1941, until the time we inaugurated our new constitution in 1948. I stress those dates because this is a long process or may be a long process from the beginning to the end, but it is very worth all the effort that goes in it. We feel that in the drafting of our new constitution in New Jersey, we set something of a new standard for modern state constitutions, but I am confident from everything that I have seen and heard about your labors here to date that you are on the way to setting a still higher standard for state constitutions, and it is a great privilege to be with you. (Applause)

PRESIDENT EGAN: Thank you, Mr. Bebout. Mr. Sundborg.

SUNDBORG: I would like to announce a meeting of the Style and Drafting Committee to be held at the table at the rear of the gallery at the morning recess, at 10:30 or thereabouts.

PRESIDENT EGAN: There will be a meeting of Style and Drafting Committee immediately upon recess. Are there reports of select committees? Are there any proposals to be introduced at this time? Are there any motions or resolutions? If not, we are down to unfinished business which takes us back to Committee Proposal No. 7. We are down to the article on health, education and welfare. Mr. Hurley.

HURLEY: In line with my notice at the previous session for consideration of the amendment to Section 11 on Committee Proposal No. 7, I ask that we take up this matter now.

PRESIDENT EGAN: Mr. Hurley asks that we take up this matter of reconsideration of the amendment to Section 11 at this time. Mr. Riley.

RILEY: Mr. President, on the supposition that Mr. Hurley may wish to discuss this, I will ask for a suspension of the rules in order that it may be debatable.

PRESIDENT EGAN: If there is no objection, the rules will be suspended. Mr. Hurley.

HURLEY: Mr. President, my discussion will be rather short.

PRESIDENT EGAN: Mr. Hurley, I believe that you were right in the first place. You should make the motion that your reconsideration come up at this time. Is that right, Mr. Riley?

RILEY: That is right.

PRESIDENT EGAN: Did you so move, Mr. Hurley, that your reconsideration be placed before us at this time?

HURLEY: That was my motion.

PRESIDENT EGAN: The Chair just wanted to be certain that the record would show that. Mr. Hurley, you have the floor.

HURLEY: On carefully going over the amendment, I came to the conclusion that it did not say what I thought that it said, that it did in fact legalize, at least possibly legalize the use of electronic devices for the invasion of privacy under a warrant and give then the information a place before the courts as admissible evidence. Now I realize that there are some delegates who properly feel that that should be done. I realize also that the law enforcement agencies should have every weapon at their command that will allow them to bring criminals to justice for the protection of the public good. I also was very anxious that the privacy of the individual be not improperly invaded by the use of such electronic devices. Although my own privacy as far as I know has never been invaded, I can readily see where it would be possible to do so. There are a great many opportunities for people who are not committing a crime and do not have criminal intent, but perhaps are somewhat antisocial to be plagued with at least a threat of blackmail, so I was desirous of having some way of preventing the improper use of such electronic devices. I use the word rather broadly. However, after giving the thing as much consideration as I was capable of, I decided that the amendment did not insure that such devices would not be indiscriminately used. It did insure that devices could be used by obtaining a warrant and made me think of the possibility that our political situation could change, could change to a position where use of the warrant could be a blow to our privacy rather

than a help to it. So I finally came to the conclusion that the best thing to do as far as I was concerned was to leave Section 11 pretty much alone as it was submitted by the Committee and to hope that the legislature, when the time came, that we were being unreasonably invaded in our privacy, to take such steps as would prevent it, so I therefore have decided if the matter comes up again to vote against the amendment.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, when this particular amendment passed on the last day of the session, I frankly was stunned and I think that the only reason it passed is that some of the delegates did not know what it did or what it meant. Now this amendment here completely destroys the Fourth Amendment as we know it in the Constitution. It in effect would completely destroy our civil liberties. I don't think that the proponents of this amendment fully realized its effect. In my opinion it destroys the individual liberties of man as we know it in the North American continent. It is a vicious infamous amendment. It is unknown in our system of jurisprudence, and I ask all the members to vote it down now.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: I voted for this amendment at the time it was presented but I, too, have changed my mind. I felt there was not a great deal of difference between the use of a warrant for search and seizure and a warrant to use one of the electronic devices, but it is now my opinion that this would be a bad thing and I feel somewhat as Mr. Buckalew does. I have prepared another amendment which I am going to submit if it is reconsidered, but I would not like to see it stay in the constitution the way we wrote it in.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I am going to be very brief. The retention of that amendment in the constitution would be the first step toward the establishment of a police state and a long broad step at that. I hope it will be defeated.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, I, too, voted for that amendment with the instructions I had, but I think it is not going to do what I thought it was going to do, and I made a decision some time ago to vote for the Committee's report except in rare occasions. I digressed there. I am sorry for it. I am going back, if I get a chance, and vote for what the Committee reported out unless something new shows up, that is going to be my position.

PRESIDENT EGAN: Mr. Riley.

RILEY: I think that I have been dragged into this a little by my heels but I should say that it was a matter of growing interest which developed the other day which obliged me to take an interest in the matter. I have been especially interested in Mr. Hurley's remarks and in his speaking against the amendment. I think that his remarks have been entirely conscientious. I know them to have been so, just as I felt the other day when he spoke for the amendment shortly before reconsidering that those remarks too were entirely conscientious, and I think that that situation, his own experience, reflects the thinking and the experience of the entire body on this particular subject matter as we have had it under discussion for two or three days. I know that I myself in first speaking on the matter stated that I had entertained grave doubts as the discussion continued and I have been back and forth on the subject from the moment it first hit the floor and so I say that Mr. Hurley's position I feel is representative of the entire body in his uncertainty. I think he knows what we are trying to reach. I think he feels that we have overreached it. I think that as Mr. Hinckel suggests, there are remedies still which can be offered to accomplish our purpose in this amendment. I will grant that there are voids, as Mr. Taylor suggests, in the present language which have brought about these fears. I thought since this discussion started two or three days ago of a naturalization speech made by the very able and eminent Learned Hand many years ago wherein he said something to the effect that the spirit of freedom is one which is not always sure it is right, while striving to be right it admits of doubt, and I think perhaps that is a characteristic of this entire Convention. We are not ever positive. We hope we are on the right course in any decision we take. Now, I personally feel we have set up a safeguard if we should use it. If we were now to use it by an amendment such as that which I suspect Mr. Hinckel may have in mind. We have gone to great lengths to create independent judiciary, a judiciary perhaps as independent as one may be. We have provided that superior court judges shall serve for six years, shall be certainly free from partisanship, that supreme court justices shall serve for ten years and shall be even more free from partisanship and from the popular whim of the moment, the hysteria that sometimes sweeps the country. I think that where we do employ those justices for the purpose of issuing these warrants we would have taken a far greater safeguard, we would have provided a far stronger safeguard than has been employed in Alaska in the case of the issuance of search warrants. Now there has not been a great wave of indignation or fear that the search warrant procedure will be abused nor an expression that it has been abused in our experience, and I submit only that the pending amendment now under reconsideration is possibly susceptible of improvement.

DAVIS: Mr. President, I spoke at some length on this matter on Saturday. Several of the delegates have told me that they thought that I had over-persuaded them in connection with the

amendment and that what we had done was actually different from what we were trying to do. I want to be clear. The fact that I do not believe as the others have stated here that we have done what we didn't intend to do. However, I certainly recognize the doubt and I will not be disappointed for anybody that may change his vote that may have voted the other way the other day because of what I said. I am still going to vote to keep the amendment as we made it, but that does not bind anyone else to the same thing.

R. RIVERS: Mr. President, I think there has been some overstatement about the first foundations of a police state and that sort of thing. About 175 years ago the founding fathers drafted a constitution and in that constitution they provided that no warrants, in speaking of searching your home or your office or your business, no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the person or things to be seized. It was our thought that we would have to provide some chance for the use of these other detection devices besides beating on your door and if you would not open it, kicking it in and pulling out your dresser drawers and that sort of thing. This all hinges upon a showing of probable cause and upon oath and affirmation to indicate the information sought. It seeks a permission from a court. Now I have not heard that the courts have been any pushovers as far as search warrants are concerned in the course of the last 175 years. How this is any more of a foundation for a police state than the original search warrant clause 175 years ago is more than I know. Certain details and other factors could be spelled in by the legislature. The legislature could say what court is to have the authority to issue these search warrants. It happens that under our present setup the justices of the peace court in Alaska have the authority to issue search warrants. Those men are not judicially trained. They are our court of limited jurisdiction but there are district courts. Our legislature can authorize a district court to be the one to consider the question upon probable cause on oath or affirmation as to whether or not any modern device could be used in the detection of crime. Now we have tried to protect the privacy of the individual here by saying that they shall not willy-nilly be subjected to wire tapping and microphones in your bedrooms and that sort of thing which they do now for information purposes which might lead them to witnesses, etc., who could produce the direct testimony for introduction in court. The way we have it before we put in this, what I call a protection of our privacy, is outside of minor trespasses. The law officers now just plain do it. Where is your privacy there? This would prevent them from doing it in any case unless they had permission from a court and that to me is better than not having any safeguard at all.

KILCHER: Mr. President, if the authorities right now without legal foundation are invading your home and listening in on conversations, etc., with technical devices, as Mr. Rivers has

admitted they do now, how much more so will they do the same thing when they are legally entitled, and once they are allowed legally to perform that sort of invasion they again will have a wave of illegal activities ahead of the legal activities like they are doing now. In other words, the invasion of a home will be greater than it is now. I can only see where we lose. We are forgetting entirely one thing in this matter, namely that all these impersonal technical devices are unreliable. They are unintelligent. They are subject to fraud, subject to tampering. In normal seizures and searches of a house there are persons involved, responsible persons whose evidence can be questioned. Let me tell you one thing of a technical means. It is entirely possible nowadays that anyone of us here can make a statement that is recorded on the tape recorder in our presence and we make a carefully thought out statement where we say, "I am not a Communist, I hate the Communists, I don't believe in Communism, and I think the Russians are evil characters. I do not believe that the government should be overthrown by force." And sit down and the machine can be used, the results of that recording can be handled in such a way and in a way that cannot be proven that it has been done, to make you having said a statement, "I am a Communist. I like Communism, and I believe in the overthrow of the government by force." This is technically entirely possible. If we permit nonpersonal technical evidence that can be tampered with without proof, we are sticking our necks in the noose. It is entirely different from the old warrants of search and seizure which is done by persons, responsible, intelligent human beings. It is a dangerous thing and I really think that we should be grateful of having this chance of reconsideration and vote the amendment pending now down and leave Section 11 as it was.

BARR: Mr. President, if we have always authorized law officers to search a home if there was probable cause, that is invasion of privacy. Wire tapping of course is another invasion of privacy and I can see no difference. I believe that we should allow it for probable cause, especially in cases of known criminals. It was said here that a recording could be altered to produce false evidence and I believe it could in certain cases it depends on what was said at that time. That is nothing new, photographs have been altered many times. It was said that a search of a house would be done personally and could not be falsified but that is not true. An officer searching a house can plant evidence. He can open a dresser drawer and drop a small package of heroin or marijuana in a drawer. That has been done, so there is actually no difference between the two, search and seizure and wire tapping. I know that for a certainty myself that wire tapping is done nearly every day in Fairbanks, by federal officers, of course, and it seems to me it would be better if they had to obtain a warrant from the court, the privacy of the individual would be better guaranteed. I have no fear of the courts issuing a warrant to tap somebody's

wire unless there is pretty good evidence that he is a criminal and engaged in a fairly serious crime. The law-abiding citizen has nothing to fear from this amendment, but the criminal has. We have the problem here of guaranteeing the privacy of the individual but one of the biggest problems in the nation today is the crime problem, and if any of you have had any experience as a law enforcement officer, you will know that the law is rigged to favor the criminal because we are guaranteeing the freedom and privacy of the individual and that works in favor of the criminal. Now, I believe in guaranteeing the privacy of the individual in every way I can. I believe that this is the best amendment that has been admitted so far that has been adopted, and I do not believe that it endangers the privacy of the law-abiding individual. I would vote against this amendment if I thought that we would then revert to the original committee report and no more amendments would be submitted. But I fear that is not so, so I believe I will vote for this amendment.

HARRIS: Mr. President, I would like to point out a couple of things here. Mr. Barr made the statement that only criminals have anything to fear from this amendment as it now stands. That is not true. The difference between a warrant for tapping a phone and the difference of a warrant in looking into a house are two different things altogether. In the first place, when you look into the house you get a warrant for that one house. You can go completely through it, that is true. That is one person's privacy you are invading. When you tap a phone anyone, that calls that number you are tapping their phone. You are not tapping the phone of one individual, you are not invading the privacy of one individual, you are invading the privacy of every person that calls that number, whether he be innocent, whether he be guilty or who he might be. Another thing here in the bill of rights is the protection of the people against the government. That was what it was intended for, and in this amendment we are giving the government complete right to go into any person's home by their telephone or in any other method at any time. If this amendment was written in such a way that it would take a superior judge to issue such a warrant, I would be in favor of it. Where you can go into a J P or any judge and get a warrant to tap anyone's phone on probable cause, I can't see my way clear in voting for such an amendment.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: As one of the proponents of the amendment, I gave it considerable serious thought over Sunday and I came here this morning with an open mind, but the more I read and study this amendment, I have to agree with Mr. Riley and Mr. Rivers that it will protect us and I am going to continue to support the amendment.

V. RIVERS: Mr. President, I feel as the previous speakers have stated that the intent of this amendment is good. We have spread

a great many words upon our records to show what our intent was, what we wanted it to do and wanted it to avoid. I realize also it is merely the outline, but then it is the general statement under which we are going to be governed and a policy that will be established by the courts. That is what was done in the case of the national Constitution. Each phrase and clause had to be interpreted in the light of its intent, and that intent effectuated by the laws and rules of the court that was set up to carry out that intent. I am confident that reviewing the phraseology as we have it here, in reviewing the records of the intents of this body, that no court could issue a set of rules or procedures in such a manner that it would be detrimental to the right of the individual. I have none of the fears that go along with this so-called preliminary establishment of a police state. We are not here, nor has it been shown as the intent of this body in any part of its proceedings to favor the despots and the tyrants who are necessary in the maintenance of a military or a police state. I do not share the fears of the souls who say that we have opened the gates here to any abuse on the part of our judiciary. It has been the practice and the experience of our country that it has to be the interpretations of these broad clauses based on intent, have to also be based upon honesty and good judgment, and I for one feel that that has been done in the past and will be done in the future, that interpreting this clause, there will not be harm but good done to the rights of privacy of the individual. I am for the amendment as it stands.

V. FISCHER: I would like to address a question to Mr. Davis, if I may.

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

V. FISCHER: If the present amendment as approved is retained, can the legislature pass a law stating that only justices of the supreme court and judges of the superior court may issue warrants under this section for the purpose of wire tapping, or will this section automatically leave it open to issuance of warrants by any court?

DAVIS: Mr. President, in answer to Mr. Fischer, in my opinion the legislature would have complete discretion in that matter. However, to go one step farther than your question--in order to meet the fears that have been mentioned here, I think possibly it might be wise if this section is retained to change it to provide that warrants shall be issued only by superior or supreme courts. Put it in the constitution.

McNEES: I do believe that stipulation, as much as I am against writing legislative law into our constitution, I do feel that the provision relative to which courts might issue said warrant should definitely be established here if we are going to

leave the present considered amendment to stand. I raise on other question. Other than the fact that any court under this present wording could issue such a warrant, there is grave question in my own mind as to who might be able to secure such a warrant and conduct such a search. For instance, any private investigating officer that may be working in conjunction with a case or with some other individual who seeks that information often conducts search with the help of the police, perhaps, where they feel that he should not be given full rein but also in many cases on his own. He might have a motive in requesting such a warrant and in conducting such a search altogether outside of the stipulation that he makes in request to the warrant. I do believe that we have left these two gaps in the present considered amendment. Beyond that I am very definitely against writing any more legislative law than we have to into the constitution. I feel that the committee proposal as it came out is perhaps just as complete an article as this body should write. Therefore, I am against the present considered amendment and will support the original article when it comes back on the floor.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I am not going to speak either for or against the amendment. I think I am going to change my vote when the time comes to vote, but I would like to call the attention of the assembly to the fact that we shall have, if we adopt the present article on the judicial branch, we shall have eight superior court judges and justices of the supreme court altogether in the entire Territory of Alaska. Four of those we may reasonably assume will be stationed at the capital city of Alaska. That is, your supreme court will sit there, and there will be without doubt at least one superior court judge assigned there. I don't know whether anybody, I am sure Mr. Robertson and probably some of the other attorneys here have had much the same experience that I have had in trying to get papers signed by a judge who is several hundred miles away, and I think we will meet this exact same situation in regard to issuing warrants for searching or for wire tapping in the event that we place that power exclusively in the hands of the superior court judges and supreme court justices, and I am quite sure that the reason the power to issue warrants has been given to United States Commissioners is due to the fact that they are more widely scattered, that they are closer to people than the more distant district courts and for that reason in the interest of expediting business and getting warrants out in time they have had to resort to the United States Commissioners and I think we will meet with exactly that situation in regard when we have statehood, that we will still find it very difficult to get warrants in time to be of any value if we limit the issuance of them to superior court judges and justices of the supreme court, and I think that that is a very definitely a thing that ought to be considered in this matter. We don't know what kind of inferior courts we are going to have, but judging by some of the United States Commissioners

that I have seen at work I would hesitate to give them authority to issue warrants for the purpose of tapping wires.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I am opposed to the amendment as it is written, and in my many years of law enforcement I have had occasion to go to the commissioner and get search warrants for property that has been alleged to be stolen, and it is my understanding that under the law of searches the officer or person who signs the search warrant must actually know, there is not any guesswork, you must know that a watch or a camera or binoculars is in a certain place. Now that is the old-time lawyers have told me that and it has been drilled into me. Now in the case of wire tapping, you have got a thing that does not even exist, you don't know what is going to be said over the wire. In the case of the search warrant, you get your search warrant and go to John Doe's place and you knock at the door and whoever comes, you identify yourself and give them the search warrant and under the authority of the search warrant you search the premises described in the search warrant. This thing here, you don't even know what is going to be said. And the next thing, when are you going to give them the warrant to tap their telephone. If you give it to them before tapping they are sure not going to talk about what you think they are going to say. I think it is a poorly written article, and as far as I am concerned, I am going to vote to retain the original recommendation of the Committee, and I would like to see the matter left up to the legislature. There may be times of national emergency or war, let the legislature make something on it. You will probably need some legislative law. If you recall, it has not been mentioned yet, during the last war our mail was all censored going between here and the states, and for a very good reason. None of us should have any fear in times of national emergency to have our privacy or personal lives, they are welcome to come into my house any time to look for anything that might affect the national security. I am going to vote against the amendment.

CROSS: Mr. President, I fail to see where we are giving anyone any right for a wire tapping in this amendment. It seems to me that it is a prohibition against invasions of privacy, at least that was the intent when it was submitted. It seems to me that the language is entirely negative here and left up to the legislature, if they see fit to give the warrants.

BUCKALEW: I don't know whether this point has been brought out to the body or not, but as Section 11 originally came from the Committee, it prohibits wire tapping. It was taken from the Federal Constitution, the Fourth Amendment has that the Supreme Court has construed that that protects the people in their homes from wire tapping. As a matter of fact, Section 11 as it was drawn prohibits wire tapping, it was taken care of by the Committee. Another thing, if Senator Barr knows of any federal

officer in the City of Fairbanks that is tapping wires as an officer of the District Court from the District of Alaska, if he will give the information to me, I will go down now and sign a complaint against that federal officer and he can be prosecuted. If he has any evidence now, I am willing to go down and sign.

PRESIDENT EGAN: The Chief Clerk will read the proposed amendment as offered by Mr. Riley and other delegates.

CHIEF CLERK: "Strike Section 11 in its entirety and insert the following: 'Section 11. The right of the people to privacy and to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches, seizures, or other invasions of privacy shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the information sought or the persons or things to be seized. Information secured in violation of this section shall not be admissible evidence in any judicial or other proceeding.'"

HURLEY: May I close?

PRESIDENT EGAN: You may, Mr. Hurley.

HURLEY: I will simply close by saying I have appreciated the arguments I have heard on the floor this morning as well as those the other day. I still feel as I did this morning that we would be better off to eliminate the amendment.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Riley and other delegates to Section 11 be adopted by the Convention?"

KILCHER: Roll call.

DAVIS: To make the thing absolutely certain as I understand it, now if we vote "yes" we are voting to retain Section 11 as amended on Saturday. If we vote "no" we are voting against that amendment, is that correct?

PRESIDENT EGAN: If you vote "yes" you are voting once more to adopt this particular amendment. If you vote "no" you are retaining Section 11 as it appears in the proposal. The Chief Clerk will call the roll.

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

Yeas: 18 - Barr, Boswell, Coghill, Cross, Davis, H. Fischer, Laws, McCutcheon, Nolan, Nordale, Riley, R. Rivers, V. Rivers, Robertson, Smith, Sundborg, Walsh, White.

Nays: 37 - Armstrong, Awes, Buckalew, Collins, Cooper, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Peratrovich, Poulsen, Reader, Rosswog, Stewart, Sweeney, Taylor, VanderLeest, Wien, Mr. President.)

CHIEF CLERK: 18 yeas, 37 nays.

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

HINCKEL: I have a proposed amendment to Section 11.

PRESIDENT EGAN: Mr. Hinckel, you may present your proposed amendment. The Chief Clerk will read the proposed amendment as offered by Mr. Hinckel.

CHIEF CLERK: "Insert the following after line 12, Section 11: 'The right of the people to be secure against unreasonable invasion of their individual privacy by the use of any electronic or other scientific device shall not be violated, and ex parte orders or warrants shall issue from the Superior or Supreme Court only upon oath or affirmation that there is reasonable ground to believe that evidence of crime may be thus obtained, and identifying the particular means of communication, and particularly describing the person or persons whose communications are to be intercepted and the purpose thereof. Information secured in violation of this section shall not be admissible evidence in any judicial or other proceeding.'"

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

HINCKEL: I move the adoption of the amendment.

V. RIVERS: I second the motion.

PRESIDENT EGAN: In as much, Mr. Hinckel, as the amendment is quite long, do you think it would be wise to have it mimeographed?

HINCKEL: It might be well. I would like to make a short statement right now. You will note that I left the original Section 11 as presented by the Committee intact because I felt that the ordinary warrants for ordinary purposes such as we have had in the past, that the inferior courts should be able to handle them, but this controversial subject which seems to be quite a little bit more delicate and should be given more consideration, can only be handled by superior or supreme court judges.

McNEES: I was just going to move the consideration of this amendment following our 10:30 recess.

PRESIDENT EGAN: If there is no objection, the consideration of this particular amendment will be held in abeyance until after the 10:30 recess in order that mimeographed copies may be on the desk of each delegate. Mr. Hurley.

HURLEY: Mr. President, I don't exactly know whether I am in order or not, but I wonder if there are any other people who have amendments to offer on this particular amendment that might be long and also need to be mimeographed.

PRESIDENT EGAN: If there are some of particular length they might take this time to offer them so they could be mimeographed. Mr. White.

WHITE: Mr. President, I am holding one as I have been for two days which I am intending to submit if this one is voted down. It is not particularly long except in that it restores part of a previous one we have once voted down. It might be read and decided whether you want it mimeographed or not.

PRESIDENT EGAN: Mr. Hinckel's amendment is the one before us, but it looks quite long all right. If you intend to offer it at all, it would probable be wise to have it mimeographed, Mr. White.

WHITE: I thought I would ask to have it read and then mimeographed if someone wants it.

PRESIDENT EGAN: The Chief Clerk may read it for information purposes only.

CHIEF CLERK: "Section 11, after the last line add: 'The right of privacy of the individual shall not be invaded by use of any electronic or other scientific transmitting, listening or sound recording device for the purpose of gathering information or incriminating evidence, subject to such exceptions and procedures as may be established by law for the protection of the public safety.'"

PRESIDENT EGAN: What is the feeling of the body? Would it be wise to have it mimeographed? Mr. Hurley.

HURLEY: I would so request.

PRESIDENT EGAN: If there is no objection we will order it mimeographed to have it ready. Mr. McNees.

McNEES: Did I understand that was to be added following line 11?

CHIEF CLERK: At the end of Section 11.

McNEES: Thank you.

PRESIDENT EGAN: If we are going to hold this matter in abeyance we could proceed with the matter on health, education and welfare.

HELLENTHAL: I move that we take the normal 15-minute recess at this time this morning rather than at 10:30 and ask unanimous consent.

PRESIDENT EGAN: Mr. Hellenthal moves that we take the regular 15-minute morning recess at this time and asks unanimous consent. If there is no objection, the Convention will stand at recess until 10:10 a.m. The Convention is at recess.

RECESS

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

HILSCHER: Mr. President, I rise to a point of personal privilege.

(Mr. Hilscher spoke under point of personal privilege.)

PRESIDENT EGAN: Is there objection to sending this wire to the President of the United States? If not, Mr. Hilscher, you may send the wire. We do not as yet have copies of the particular amendment as offered by Mr. Hinckel, do we?

CHIEF CLERK: Yes, we do.

PRESIDENT EGAN: Then we have before us the proposed amendment as offered by Mr. Hinckel to Section 11. Mr. Hinckel, did you move the adoption of that proposed amendment?

HINCKEL: Yes, I did.

CHIEF CLERK: Mr. Rivers seconded it, Ralph Rivers.

PRESIDENT EGAN: Is there discussion of this proposed amendment? Mr. Hinckel.

HINCKEL: I think that the brief statement I made is all that is necessary for me to make. We discussed the thing very thoroughly and we should have a comprehensive understanding of the problem

PRESIDENT EGAN: Is there further discussion? Does everyone have a copy? Mr. Hurley.

HURLEY: I ask that we have a two-minute recess.

BARR: If I may object, what is the purpose of the recess?

HURLEY: I would like to read these things.

BARR: Excuse me. I thought maybe somebody wanted to write another amendment.

PRESIDENT EGAN: It might be best to hold this in abeyance and come back to it, whatever the Convention feels. If it takes too much time now to digest the proposed amendment, it might be better to proceed and come back to this.

HURLY: I withdraw my request.

PRESIDENT EGAN: Is there discussion of the proposed amendment as offered by Mr. Hinckel? Mr. Riley.

RILEY: I did not rise to discuss it, but to step into the breach created when Mr. Hurley withdrew his request for a recess. I would like a recess if I may.

BUCKALEW: Could we make it five minutes?

PRESIDENT EGAN: Perhaps, Mr. Buckalew, the Chair was wondering if it might be better to go on with the article on health, education and welfare and when this has been completely digested, then we could come back to it later. Mr. Riley.

RILEY: In my own obscure manner, Mr. President, the two are related in my mind.

PRESIDENT EGAN: The Convention will stand at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us Mr. Hinckel's proposed amendment to Section 11. The question is open for discussion. The question is, "Shall Mr. Hinckel's proposed amendment be adopted by the Convention?" Mr. Londborg.

LONDBORG: Mr. President, I feel that I can take a minute or two on this. I did not address the assembly before on this matter. As I see it now, it is going to leave the issuance of warrants up to the two courts, and I think Mrs. Hermann pointed out very clearly that they are not going to have the time to handle that and also I feel that in reference to the inferior court system, that they have other authority that I believe is just as great if not greater than the matter of wire tapping. They have the authority to put a man in jail up to a year. They have the authority to do other things, and while we hear many cases of injustice, maybe we should also consider the possibility of 90 or 99 per cent of the cases that they may be handled right also. It looks to me that this could well be handled by legislation. There seems to be a fear of the state police system coming in, but I don't think that the legislature, if they can't protect us from that in the matter of wire tapping, then the police state is going to come anyway. I think the whole matter should be left up to the legislature.

HINCKEL: I agree that the commissioner's court should handle the first part of Section 11 as presented by the Committee, but these other matters which I have covered in the second paragraph of this section, I believe, should not be handled by the commissioner's court, and I don't think that they are things that are going to come up often enough so that they can't take just a little extra time and get ahold of a person with a little more mature judgment and experience before such an order was issued. I objected to some of the previous amendments for that reason. It worried me that persons of inexperience or lack of the proper judgment would issue orders to tap wires or use these other various electronic devices which may be developed in the future and so I just will not go along with anything that will permit that, but I do think that the law enforcement body should be permitted, when it is absolutely necessary, to have it to use, and I think I have covered it pretty well by this amendment. I would not be adverse to anyone improving upon it if they can. The legal verbiage I did not think up myself. I took it from the Constitution of the State of New York. This is not the same as the State of New York's provision, but the legal words as I used them to describe my intent came from their Constitution, so I am pretty sure it is workable and useable.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: This is the last time I am going to speak on this subject. I think that this amendment should be voted down. I think that Section 11 as drawn, I am confident that it prohibits wire tapping. I think that Section 11 as it is drawn would prevent in the future an invasion of a man's home by any kind of sound wave or any other kind of device and I believe on the wire tapping it should be left to the national government. If it comes to a day when we have a problem with subversion, I think the national Congress will act on that subject and it will be a federal question. I would rather see the amendment defeated because I believe Section 11 will absolutely protect the citizens.

ROBERTSON: I believe I could go along with this amendment if instead of "reasonable ground" the words "probable cause" were used. The words "probable cause" have been construed in the Federal Constitution provision many times and I don't know of any construction with the words, "there is reasonable ground".

COLLINS: There is another angle to this amendment that presents itself to my mind, "The right of the people to be secure against unreasonable invasion of their individual privacy by the use of any electronic or other scientific device shall not be violated". I am just wondering if Mr. Hinckel had in mind that a driver on a highway would consider that his privacy would be invaded by an electronic device such as they are establishing throughout the United States. One of the greatest problems confronting American people today is the number of deaths on the highway. In various

states of the Union they have established the radar to catch a speeder, a potential murderer on the highway. Now if the roads of Alaska, undoubtedly during statehood, we will have more traffic than we have today. Every driver on the highway realizes that the potential murderer is a man with a car that's driving 60 or 70 or 90 miles an hour, if he can be apprehended by the use of radar, it is going to save the lives of many, but if the police patrols are prevented from going into court and using the evidence which they have secured by the radar, that potential murderer is going to get away with it for then it is up to the police to offset testimony of that driver, which oftentimes is intoxicated, oftentimes the passengers are intoxicated. It has been the means of killing a man, wife and all his children. I am wondering if the interpretation of this amendment would say that the privacy of a drunken driver would be violated by the evidence secured by the electronic device. I think in view of the study of the report of the Committee that they have covered the protection for privacy. No man living within the law has any fear of an unreasonable search or seizure. They have had time to study them. Now it seems to me that there is a movement here to throw every safeguard around the criminal. I say again that a man who lives within the law has no fear.

V. FISCHER: Mr. President, I am very much opposed to wire tapping, almost in any instance. I think there are only a few exceptions where wire tapping might possibly be justified and I have been sympathetic to various proposals that have been introduced to amend Section 11 beginning with the first minority report. However, each proposed amendment has raised a number of other questions that have in most cases forced me to vote against the eventual adoption of the amendment, and I personally have come around to the point of view that when this problem becomes serious in the State of Alaska or even in the Territory of Alaska, our legislature will take the necessary action. I think it has been pointed out here before that to date this has not been a very serious problem. Had it been so, I am sure that we would have had a lot of discussion of it in the past on legislative floors as well as in all our various communities where any abuse or invasion of individual privacy might have taken place. It seems to me that the basis for the protection of individual privacy exists in our constitution. I think that rather than putting in language that is questionable, and so far every proposed amendment that has been introduced has raised questions such as Mr. Collins just now brought up, and the current one may be open to abuse. I think the other amendment that has been mimeographed has more or less the same deficiencies. Therefore, I personally am opposed to this amendment, and I believe in the interest of protecting the privacy of individuals, in the interest of getting a workable clause on to our law books, we should leave this matter to the legislature which can spell this out in detail to meet the needs of the day.

R. RIVERS: Well, just briefly, I agree with Mr. Buckalew that subversion is largely a federal question and that actually this bears more heavily on operations by the federal government. What we would put in here under our own police system of our state would not detract one bit from the power of the federal government, so let's as far as our own local scene is concerned, let us forget the federal question. Radar, Mr. Collins is concerned about this. That is a legitimate inquiry. At the present time, under your search and seizures law and under the authority of the highway patrol statutes and regulations that are made in the public interest, the police buzz you down, make you show your driver's license, take a look at your car, and I think they are quite abusive sometimes in spite of safeguards. I can almost assure you, Mr. Collins, taking tabs on a man's speed by radar is not going to be invasion of privacy and would not be prohibited under this amendment. It does not fit in to an invasion of privacy. Sure, it is the bunk to get caught, but that is about all there is to that. Pursuing Mr. Robertson's suggestion of which I approve, I move to amend this proposed amendment as follows: On line 5 of the printed copy before us, I move to delete "there is reasonable ground" and substitute "probable cause exists".

PRESIDENT EGAN: Mr. Ralph Rivers moves to delete the words "there is reasonable ground" on line 5 of this proposed amendment and substitute "probable cause exists".

R. RIVERS: I ask unanimous consent.

KILCHER: Objection for a point of information. You would still leave, in other words it would read then "that probable cause exists to believe"? That something is probable and you believe?

R. RIVERS: That is a standard expression, Mr. Kilcher. May I have a recess for a couple of minutes?

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

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Rivers, did you move the adoption of the proposed amendment?

R. RIVERS: I did and now I ask unanimous consent for the privilege of withdrawing my proposed amendment.

PRESIDENT EGAN: Mr. Ralph Rivers asks unanimous consent to withdraw the proposed amendment. Is there objection? Hearing no objection it is so ordered. Mr. Rivers.

R. RIVERS: I now move an alternative motion after consultation, that the words "reasonable ground" be deleted and the words

"probable cause" be inserted in lieu thereof.

PRESIDENT EGAN: Mr. Ralph Rivers moves, is that correct, and asks unanimous consent that the words "reasonable ground" be deleted and the words "probable cause" be inserted in lieu thereof. Is there objection? Hearing no objection, the proposed amendment to the amendment is ordered adopted. Mr. Ralph Rivers.

R. RIVERS: I would like to follow up a little bit. It would then read "upon oath or affirmation that there is probable cause to believe".

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I would like to speak further against this same amendment here. I believe if we follow the language, the original section submitted by the Committee and leave any additions up to the legislature, in my way of thinking this amendment would help the criminal rather than to help the law enforcement officers. Let's take an example of say an officer is following a suspect in the city and he puts on glasses and false whiskers and follows the suspect around. The suspect takes a room in skid road in one of the hotels and you take a room adjoining there and maybe in your four walls you are legally entitled to be there. Suppose you have a listening device or an ear that magnifies sound or a recording machine and you listen to a conversation in the adjacent room when actually you are within the four walls you are entitled to, and according to this if you don't have a blanket order the information you might gain and with which you might solve a serious case, that would preclude you from ever submitting that evidence in court. Therefore, I am voting against this amendment.

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

TAYLOR: I have an amendment.

PRESIDENT EGAN: Do you wish to offer an amendment? Mr. Taylor wishes to offer an amendment to the proposed amendment at this time.

BARR: Mr. President, it seems to me we have spent a lot of time with amendments to the amendment, and I submit to you it would be lots easier to vote on this amendment than keep on amending it.

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

CHIEF CLERK: "After the word 'violated' in the third line, insert a period and strike the balance of paragraph eleven."

TAYLOR: I move the adoption of the amendment to the amendment.

PRESIDENT EGAN: Is there a second to the motion?

KILCHER: I second the motion.

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

TAYLOR: I would like to speak on that a minute. I talked with quite a number of the members of the Convention and in matters that have been brought forth here it seems to me that quite a number are in favor of leaving it to the legislature to implement or to make any exceptions to the wire tapping prohibition. I think if we put in in the way I have it here, "the rights to privacy will not be violated", then it will be up to the legislature if they wish to make a change. I might say that in the Congress and in the law enforcement bodies of the Department of Justice there has been considerable controversy as to the right of wire tapping. Most of them have come out against it and the nearest they have ever got to some kind of an agreement, and that has not gone into effect, is that the federal government could under exceptional circumstances after a hearing before a United States Federal Judge, could issue an order allowing a wire tap, but it must be exceptional circumstances and I feel that if we just put in here that it is just a direct prohibition against a wire tap that if Congress did enact a law which did give some restrictions, it would be applicable to Alaska, and we could take advantage of it then. I am very dubious of little by little surrendering or allowing exceptions to be made to the guarantees to the people piece by piece. We have the Federal Constitution. They did not give any exceptions on search warrants. We should not give any exceptions on this because this is a much graver matter than is the searching of your house which they come into for a few minutes, but under this they might sit on your wire for six months or six years.

PRESIDENT EGAN: Mr. White.

WHITE: This in substance is exactly the original minority report which we long since voted down. In my opinion it leaves absolutely nothing to the legislature.

PRESIDENT EGAN: The question is, "Shall the proposed amendment to the amendment as offered by Mr. Taylor be adopted by

the Convention?" All those in favor of the adoption of the proposed amendment to the amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment to the amendment has failed of adoption. We now have the proposed amendment to Section 11 as offered by Mr. Hinckel. The question is, "Shall the proposed amendment as offered by Mr. Hinckel be adopted by the Convention?"

HINCKEL: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 14 - Armstrong, Boswell, Davis, H. Fischer, Hellenthal, Hinckel, McCutcheon, Poulsen, Riley, R. Rivers, V. Rivers, Robertson, Smith, Sundborg.

Nays: 40 - Awes, Barr, Buckalew, Coghill, Collins, Cooper, Cross, Doogan, Emberg, V. Fischer, Gray, Harris, Hermann, Hilscher, Hurley, Johnson, Kilcher, King, Knight, Laws, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Reader, Rosswog, Stewart, Sweeney, Taylor, Walsh. White, Wien, Mr. President.

Absent: 1 - VanderLeest.)

CHIEF CLERK: 14 yeas, 40 nays, and 1 absent.

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

WHITE: Mr. President, I move the adoption of my amendment that is on the members' desks.

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

DOOGAN: I second the motion.

WHITE: Mr. President, I believe everything that could possibly be said on the subject has long since been said. I have two brief comments only. The comments on the amendment itself is that it differs from the previous one in this respect among others, and that is that if there is question to the matter that Mr. Collins brought up as to the use of radar to speeding, this matter would allow blanket exceptions by the

Legislature. The other one is this. I don't like to waste time speaking for the record, but several references have been made to the record this morning, and I will have to take exception to something said by my good friend, Delegate Buckalew. I believe the use of wire tapping has been permitted by every attorney general in the United States since 1931 and there would be no prohibition in the Federal Constitution against wire tapping, but use of the evidence obtained thereby is not permitted.

DAVIS: May I ask Mr. White a question?

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

DAVIS: Mr. White, I am wondering if it is your intention here to allow the legislature to promote regulations against any kind of device, whether it be sound, tape recording or any kind of device? I am afraid the language as it stands is limited to certain particular kinds of scientific devices. Supposing this amendment is adopted, is it your intention that any kind of device that might be used would be subject to this regulation? If so, I don't think there is any use in making amendments. We will clear it up in Style and Drafting or some other way and get going on this thing.

WHITE: I would agree with you, Mr. Davis. I asked the question during the last recess and said I would agree to almost any amendment that would clear up the first four sentences. For instance, if anyone wanted to strike the words "transmitting, listening or sound recording", that would be perfectly agreeable with me.

PRESIDENT EGAN: Mr. White, if the Chair might ask you a question, is it just the underlined matter in your proposed amendment that is supposed to be the new matter?

WHITE: I underlined that on my handwritten amendment to emphasize that that is the only new matter before the body. The first three and one-half lines were contained in the original minority report but my amendment includes all the matter on this mimeographed sheet.

PRESIDENT EGAN: Every word in this proposed amendment is new matter?

WHITE: Technically, yes.

BARR: This question we are considering here is rather complicated, and I want to point out to you that actually if we

considered every angle and took into consideration every kind of device that might be used, it would take a long time. The usual procedure in the legislature is to do that. A question like this would take each house probably an hour or two hours to go over it and in addition would hear expert witnesses, probably officers of the court and electronic experts testify and they would have the time and the knowledge to go through this and make certain exceptions and I am sure they would certainly protect the rights of the citizens. That is what they are there for, so I believe the legislature can take care of this very well. I am normally for no more amendments, but this amendment seems to me to be pretty good because it would provide just what we need.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, I have not spoken and I don't intend to speak but I would ask if Mr. White would consent to the amendment he spoke of there, simply striking out after the word "scientific", striking out the words "transmitting, listening or sound recording" so it would merely read "scientific device"?

WHITE: With the consent of my second I would agree to the deletion of those words.

PRESIDENT EGAN: You ask unanimous consent, Mr. McNealy, that those particular words be deleted? Is that your purpose?

McNEALY: Yes, Mr. President.

JOHNSON: I would object to that.

McNEALY: I so move.

R. RIVERS: I second the motion.

PRESIDENT EGAN: The words "transmitting, listening or sound recording" be deleted from the proposed amendment.

McLAUGHLIN: I would like to ask a question of Mr. White. What then, Mr. White, is a scientific device as opposed to a nonscientific device?

WHITE: I will have to answer that by saying I am not an expert in that field. The trouble with any of these things is of course that we want to cover every possible eventuality with a perfect language and I don't believe it could be done. To do it, we would be here for weeks. The merit of this to

my mind is that it seems to accomplish the intent of the body to say something on the subject but it allows the legislature to make such exceptions and establish such procedures as they may desire.

BARR: I believe that I could answer that question. A scientific device that does not make use of electronics, perhaps would be a listening tube, a pair of binoculars, which is used as an optical principle.

PRESIDENT EGAN: Mr. Stewart.

STEWART: Could I ask a question? Would there be any objection, Mr. White, to eliminating the word "scientific", just leave it "device".

R. RIVERS: I would object.

WHITE: Well, I would have no objection to eliminating the word "scientific", I don't know what to say. As I have already said, I think we could be here all week trying to draft perfect language on this. The point is to say something about protecting the right of privacy of the individual and then to allow such exceptions that have become obvious to me that we have to allow for. I will not move that "scientific" be stricken, but if you want to, go ahead. I won't oppose it.

KILCHER: I am perfectly convinced that there are no occasions on the state level where any of these amendments and subamendments and deletions, whether we amend them or not, are applicable. So my remarks, I hope to speak the last time on this, and I think my remarks will go for any of the amendments. I am in favor of the original Section 11, namely that the matter is not mainly criminal but it is a matter of political and civil rights that are at stake, and wire tapping could not possibly be compared with a search warrant. It would rather be compared with fishing for evidence, like in a case of murder it would be --

SUNDBORG: Point of order. The matter that is before the floor is a motion to strike the words "transmitting, listening or sound recording". If Mr. Kilcher wants to speak on that, let him speak, but he seems to be speaking on the whole amendment. The matter before us is, as moved by Mr. McNealy, is striking the words "transmitting, listening or sound recording".

PRESIDENT EGAN: That is correct, Mr. Sundborg. The question is, "Shall the words 'transmitting, listening or sound recording-

be deleted from the proposed amendment?" All those in favor of deleting those words from the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the words, "transmitting, listening or sound recording" have been deleted. Mr. Cooper.

COOPER: Do you realize that right now any one of the 55 delegates at this Convention can walk outside this door and commit murder and there is no scientific device that can be used to gather information to prove that they committed murder. I have a right to my privacy and a scientific device can be construed to mean finger printing or any other means of obtaining information. There had better be some thought on this. I am speaking on this amendment as it is.

TAYLOR: Mr. White, I think, has given a lot of thought to this matter and I think he has the right approach. I don't believe that at this time that a law regarding wire tapping is necessary, just as much as Congress did not think such a law was necessary. A couple of years ago when Mr. Brownell, Attorney General of the United States, was toying with the idea of having a wire tapping bill introduced in Congress, but after consultation with a number of the heads of the law enforcement agencies, including J. Edgar Hoover, the Chairmen of the Judiciary Committees of both the Senate and the House, and able constitutional lawyers of the East, he decided not to do it. J. Edgar Hoover was opposed to it, the leading law professors of the East were opposed to it because the danger was greater than the good that could be expected from it. There might be in a few cases, but they felt there was such a breakdown or insidious invasion of the rights of the people to be secure in their privacy that they felt the law should be left the way it is and let the courts pass upon the admissibility of evidence and if it had been secured in an illegal way by the invasion of your home or privacy, it would not be admissible. When the Attorney General of the United States would not do this and when J. Edgar Hoover, whose honesty and conscientiousness has never been questioned, came out flatfootedly against legislative enactment of a wire tapping bill, I think it ill behooves us here to draw a proposed constitution for the State of Alaska to rush in, and we rush in where the angels fear to tread. I think that this possibly should be left entirely out of the proposed constitution. Let us rely upon the guarantees of the bill of rights as it is written by the Committee. Vote this down and go ahead and adopt Section 11 as reported in.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. Chairman, the Attorney General of the United States was considering asking Congress for authority to wire tap and use that evidence in court. Somebody might go and ask our

legislature someday for the same thing. Our legislature might turn it down, the same as Congress at this time showed no particular disposition to pass it. So by leaving it specifically up to the legislature to make these exceptions, then you are leaving it open for the future to solve its own problems. I don't think Mr. Taylor's proposition about trodding where angels fear to tread is analogous. We say there shall be no invasion of right of privacy by the use of these devices except such as the legislature may allow. The federal law is much the same way now. That is, they can't admit any evidence that is obtained through transgressions upon privacy into court at the present time, and they are not about to allow that be admitted as evidence in court, so here we are saying that our legislature, that none of that can be used except such as our legislature may allow.

HELLENTHAL: Briefly, I feel that this amendment places stress upon the right of privacy such as, we have stated before, we felt should be placed upon the right. It fully protects us in that the legislature may make exceptions. If Mr. Cooper's contention is correct that finger printing would be the use of scientific device, the legislature could make an exception in that case, and I am sure they would. But this stresses the present day need for preservation of the right of privacy, places emphasis upon the existence of that right which has grown up during the last 50 or 60 years and then gives full freedom to the legislature in addition to the courts to protect us and for that reason I favor the amendment. I cannot see how it can conceivably could harm anyone, how it could thwart the law enforcement agencies, and I feel it is a pressing matter for this state to consider. It is not handled by the federal government, it is a matter of state concern. and the future state of Alaska should properly concern itself with this amendment and this is a good amendment.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. President, I again feel that the use of the words "electronic" and "scientific" will certainly handcuff the officers in carrying on investigation of serious crimes. I speak with nearly 15 years of experience in that activity. I can visualize, if you should see fit to pass this amendment. I can see in the future state, in the courts thereof, thousands of hours being spent with criminal lawyers in the courts, arguing whether a criminal's constitutional rights have been violated by, say, an officer picking up evidence through a false ear or a hearing aid or a camera operated on a battery. I urge each and every one of you to vote "No" on the amendment.

BUCKALEW: I just want to say one more thing on this subject. It is a dangerous invasion of the rights of the individual citizen, and it is bad and it should be voted down. We are supposed to protect the citizens of the state, not leave it up to the legislature, and it should be voted down.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended and 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: 14 - Cross, Davis, H. Fischer, Hellenthal, Laws, McCutcheon, McNealy, Poulsen, Reader, R. Rivers, V. Rivers, Robertson, Sundborg, White.

Nays: 40 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Doogan, Emberg, V. Fischer, Gray, Harris, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McLaughlin, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Riley, Rosswog, Smith, Stewart, Sweeney, Taylor, Walsh, Wien, Mr. President.

Absent: 1 - VanderLeest.

CHIEF CLERK: 14 yeas, 40 nays, and 1 absent.

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

HELLENTHAL: I move the previous question.

GRAY: I second the motion.

PRESIDENT EGAN: What is the previous question?

HELLENTHAL: Adoption of Section 11.

TAYLOR: I move the adoption of Section 11 as it is contained in the committee report.

MARSTON: I second the motion.

PRESIDENT EGAN: There is no previous question, so the previous question motion at the time it was made was out of order.

COGHILL: I now move the previous question.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: We don't adopt anything until third reading. All we are doing here is amending and we have not adopted any other

section or article or anything else yet. We have been amending in second reading. There is nothing before us at this time.

PRESIDENT EGAN: The Chair was undecided about that question originally himself and that is, when we adopt amendment, we are adopting them into the proposal. We are not passing them in their final form necessarily, so Mr. Sundborg's point would be well taken. Mr. McNees.

MCNEES: I move that we proceed to the article, Committee Proposal No. 7, on health, education and welfare.

RILEY: May I call attention to the fact that we have in the gallery one who is largely instrumental for the creation of this Convention, through serving, as I recall, as Chairman of the Statehood Committee in the last legislature in the Senate. I refer to Judge Earl Cooper, and ask that he be extended the privilege of the floor.

PRESIDENT EGAN: If there is no objection, Judge Cooper, you have been extended the privilege of the floor for a brief statement.

BARR: I second the motion.

JUDGE COOPER: Chairman Egan, fellow Alaskans. I think it would not be inappropriate at this time to say fellow Americans, because I am sure we are about the business of Americanism today. A lump kind of came into my throat today as I drove up in the taxi and saw the sign out front, "Alaska Constitutional Hall". I thought to myself what a historic occasion those people are about in there today. As I look into your faces I could almost call every one of you by name. That is significant to me from this viewpoint because here, establishing a Constitution for the next great State of Alaska are people who have identified themselves with civic groups, professional groups, various organizations which have concerned themselves with the welfare of Alaska throughout the years. I think the people have chosen well. Two things are significant to me in connection with this Constitutional Convention. One is the fact that you have gone about your deliberations with the sincere and honest desire to bring out a Constitution that is going to be acceptable to all the people of Alaska. The second thing that is quite significant to me, although I happen to be identified with one of the two major political parties, you have approached your deliberation here with a spirit of nonpartisanship. This was highly necessary to come out with a constitution that would be acceptable to the people of Alaska. I think you are to be highly commended, my friends. I wish I was a part of this group. I wish I could sometime gather my grandchildren about my knees and say I had the opportunity of affixing my name to a state constitution. If I get a little emotional about this

it is because you people are making history here today. This deliberation intrigued me the way you have gone about it with a seriousness, sincerity and the conscientious attitude you have shown. Of course, you will arrive at your areas of difference of opinion. We all have different approaches to the solution of our problems. But you approach this, I think, with what is good for my fellow citizens of Alaska. I predict, although I don't set myself up as a seer, I predict when you come out of here, when your deliberations are over, you can take pride in the fact that you have submitted for confirmation a document all of Alaska can take pride in. Thanks very much for extending me this privilege, and Godspeed.

(Standing ovation.)

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

COGHILL: I have an amendment on the Chief Clerk's desk.

PRESIDENT EGAN: We have before us the article on health, education and welfare. Mr. Davis?

DAVIS: Before proceeding I wonder if under the suggestions made the other day we can now send the first part of this article to Engrossment and Enrollment. I so move.

HARRIS: Point of order. I believe there is still a motion by Mr. White to be considered.

SUNDBORG: If Mr. White had desired to move reconsideration, his right to do so should have been done yesterday.

WHITE: I had no intention of so doing.

PRESIDENT EGAN: It seemed to the Chair, Mr. Davis, that we had already let the proposal go to the Committee with the understanding that other amendments were not precluded.

DAVIS: You may be right and if so my motion is out of order, but at least Section 11 did not go.

PRESIDENT EGAN: Your motion is not out of order unless the Chair is correct.

CHIEF CLERK: After the reconsideration you withdrew the order, so it is in order.

PRESIDENT EGAN: Is there objection to Mr. Davis's request that the article be referred to the Committee on Engrossment and Enrollment at this time with the understanding that it would still be in second reading? Is that your understanding, Mr. Davis, until we finish with the article on health, education and welfare?

JOHNSON: Point of order, Mr. President, if it is referred to the Committee on Engrossment and Enrollment, it would take a suspension of the rules, if it were to be amended again.

PRESIDENT EGAN: Mr. Johnson, the reason it was done in the case of the article on the initiative and referendum, we asked that it go to the Committee on Engrossment and Enrollment with the understanding that it would not be final in the Engrossment and Enrollment Committee until we finished with the other part of the proposal, which was the article on the referendum. You see this article here is merely a section of or an article included in Committee Proposal No. 7. Mr. Taylor.

TAYLOR: I believe that the President is right in that particular matter, that this at the present time, although referred to the Committee on Engrossment and Enrollment for the purpose of coming out with the proposal, up to where we have left off now, in proper form with the amendments, but it is still in second reading. It has not been passed on to third reading and would be subject to amendment after it comes back. Is that what the Chair intends?

PRESIDENT EGAN: That was the intention unless there is objection. We have before us Section 1 of the article on health, education and welfare. Miss Awes.

AWES: I would like to move for a five-minute recess and ask unanimous consent.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chairman of the Committee had informed the Chair that by the time the delegates got seated, they would be finished. Mr. Sundborg.

SUNDBORG: I move and ask unanimous consent that the remarks of the Honorable Earl Cooper be spread upon the journal today.

MARSTON: I second the motion.

JOHNSON: I have one suggestion, that we also include the prayer given by Father Boileau.

SUNDBORG: I accept that as part of the motion.

PRESIDENT EGAN: You have heard the unanimous consent request. Is there objection? Hearing no objection, it is so ordered. Mr. Coghill.

COGHILL: Mr. President, the time is growing quite short and it is almost noon. As Chairman of the Administration Committee, we would like to know what the feelings of the delegates are today as to night sessions. Are we going to recess at 5:30 and take up again at 6:30 or 7:00? There is a bus at 9:50 p.m. Now it is going to be quite hard to get bus transportation or special buses out at that hour apparently because the buses are running to the army bases at that time, so I am going to call for an Administration Committee meeting at 1 o'clock and the things we have to decide on hinge on what the delegates wish as to the evening sessions, when they wish to start them, and as to the time that they would like to adjourn as of an arrangement that we had when we first started the session after our hearing recess. We will also have to know if we are going to recess and have lunch or supper here. The management of the cafeteria will have to know at noon to provide for this evening.

PRESIDENT EGAN: It is the recollection of the Chair that at the committee chairmen meeting at which this subject was discussed, the remembrance of the Chair is that the convening time of 7 o'clock in the evening was discussed, and that we left the rest of the adjournment time open partly because of the bus problem. Mr. White.

WHITE: I was just going to direct a question to Mr. Coghill, if I might. The time of the next previous bus before 9:50?

COGHILL: It leaves the University at 6:50 and at 9:50. The 7:50 bus has been canceled, so if we had evening sessions say until 9:30, that would give the delegates plenty of time to get wraps and into the bus.

WHITE: I just thought while I was on my feet I will make the only comments I have to make on this subject. It appears to me that an hour and one-half for dinner would be taking considerably more time than we need for the function of eating, and it would slow us up later in the evening than we really would have to be.

PRESIDENT EGAN: Do you suggest from 5:30 to 6:30? Mr. Fischer.

V. FISCHER: I think an hour and one-half would be worthwhile. I think pressure would have built up by then. In addition, a number of committees are still working and will be working. Style and Drafting are going on even beyond that, so I think if we could give people a chance to have committee meetings and relax a little bit, if they have a chance to do so, it would be good, and therefore if we recess from 5:30 until 7:00, it would be desirable.

R. RIVERS: I would like to support Mr. Fischer's views. Some of us are compelled to drive to town during that break, and to get to town and back again requires an hour and one-half.

PRESIDENT EGAN: Mr. Rivers, then, are you asking unanimous consent that it will be the policy of the delegates to recess from 5:30 p.m. until 7:00 p.m. and convene in session until 9:30, depending on if that is the last bus?

R. RIVERS: 9:30 would still give us 20 minutes. I just ask unanimous consent in regard to this general idea.

PRESIDENT EGAN: Is there objection to that being the policy of the Convention? Mr. Kilcher.

KILCHER: Point of information. Would that include all six days of the week and possibly, or possibly maybe five only?

PRESIDENT EGAN: It might include all six days.

KILCHER: I suggest it might exclude Saturday.

PRESIDENT EGAN: After a few night sessions we might really get going and digging away. Mr. Coghill.

COGHILL: If there are no objections to that, it would be advantageous to the Committee on Administration if we could have a showing of hands of how many of the delegates figure they would be here for supper tonight.

HILSCHER: Anyone wanting a double serving should raise two hands.

PRESIDENT EGAN: There will be then about 40 who plan to be here for the evening meal. Mr. Coghill can make those arrangements during the lunch hour, if he will. Mr. Coghill.

COGHILL: Therefore, if there is no other business before the floor, I move that we adjourn until 1:30 this afternoon.

SUNDBORG: Style and Drafting Committee will meet immediately upon recess at the table at the rear of the gallery.

AWES: Bill of Rights will meet immediately upon recess in the committee room upstairs.

V. RIVERS: The Executive Committee will meet immediately upon recess upstairs.

COGHILL: The Committee on Administration will meet at 1 o'clock in the large committee room upstairs.

SWEENEY: The Committee on Engrossment and Enrollment will meet at 12:45.

PRESIDENT EGAN: If there is no objection, then the Convention will stand at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us the article on health, education and welfare. Miss Awes.

AWES: I placed an amendment on the desk which has been submitted by the Bill of Rights Committee.

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Mr. President, I just wanted to get this thing off my desk before we got started on this other thing. Mr. President, your Committee on Engrossment and Enrollment to whom was referred Committee Proposal No. 3, has compared same with the original and finds the same correctly engrossed, and the first enrolled copy will be on the delegates' desks this afternoon. I move the adoption and ask unanimous consent.

PRESIDENT EGAN: Mrs. Sweeney asks unanimous consent that the report be adopted. If there is no objection, Committee Proposal No. 3 is referred to Style and Drafting. Does the special Committee to read the journal have a report to make at this time? Mr. White.

WHITE: I made a report this morning and there is no additional report.

KNIGHT: On rechecking we find that page 9 of the journal for the 43rd day, roll call, under "nays", strike "Barr" and insert "Awes".

PRESIDENT EGAN: Page 9 of the journal of the 43rd day, the first name should be "Awes" instead of "Barr" under the "nays". You ask unanimous consent?

KNIGHT: I do, Mr. President.

PRESIDENT EGAN: Is there objection to adopting the journal of the 43rd day with the suggested correction as offered by the special Committee to read the journal? Hearing no objection, it is so ordered and the journal for that day is ordered approved. At this time we have before us the article on health, education and welfare, and we have the proposed amendment, as proposed by the Committee on Preamble and Bill of Rights. The Chief Clerk will read that proposal. Mr. Sundborg.

SUNDBORG: I would like to report for the Style and Drafting Committee, if I may at this time, that the Committee is hard at

work utilizing the subcommittee method on the articles which had been referred to us. The subcommittees consist of three members each, and they are going over the proposals word by word. We have adopted within our Committee a procedure whereby after the subcommittee has agreed upon its recommendations to the full Committee, but before the full Committee has acted, the subcommittee will contact the substantive committee involved with the view to having one member who would be a spokesman for that committee sit with our subcommittee to go over in detail the suggested changes so that we may be certain that we are following the intent of the committee which originally drafted the article or the intent of the body as expressed here on the floor in amendments. Then after our subcommittees have so conferred with the representative of the substantive committee, the full Style and Drafting Committee will consider their report and report something back here to the Convention floor. My purpose in announcing this to the Convention at this time is to alert each of the major committees to the fact that we will want to have you designate a spokesman or representative of your committee to meet with our subcommittees as we work on your proposals.

PRESIDENT EGAN: That is a matter you will undoubtedly take up with each committee as you come to that.

SUNDBORG: We will notify the committee when we would desire a meeting but we would like to have them be ready to nominate someone to represent them so we will not be delayed.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to Section 1.

CHIEF CLERK: "Section 1, article health, education and welfare, add the word 'educational' before the word 'institution' on the last line."

PRESIDENT EGAN: What is the pleasure of the Committee?

AWES: The Committee met and unanimously adopted this proposed amendment. The word is put in purely for clarification purposes, and I ask the adoption and ask unanimous consent.

PRESIDENT EGAN: Miss Awes asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Taylor.

TAYLOR: Point of information. Is that the only amendment, to put the word "educational" in front of the word "institution"? I am not objecting.

PRESIDENT EGAN: If there is no objection -- Mr. Victor Rivers.

V. RIVERS: I will have to object a little further because that does not in my opinion cover the context of certain communications that we had read here. I will object for this time.

BUCKALEW: I second it.

PRESIDENT EGAN: The subject is open for discussion. Mr. Hellenthal.

HELLENTHAL: I rise to a point of order. I don't think that it is necessary to vote on the proposed amendment. The Committee met and unanimously decided that the word should be included, and rather than have their report remimeographed they merely want to present it with the word in it, and then in the proper course of time the matter will be considered.

PRESIDENT EGAN: No, Mr. Hellenthal, it will have to be amended. Your report is before us and the only manner it can be amended in now is by the action of the body. I understand what your feeling was here, but that is out of that jurisdiction at this time. Miss Awes.

AWES: I will give a little explanation of this. This word, as I said before, was merely for clarification purposes. It was the opinion of the Committee that is what this meant originally, but it was implied by virtue of the fact it was in the education section, but there have been so many comments and so many questions, both from the members of the body and from the communications which have come into the Committee and the Convention, we thought it would be better if this were amended to conform with the intent, at least so it is clear what the intent of the Committee is, and that is the only purpose in submitting this at this time.

HERMANN: Point of information, if we adopt this amendment now and insert the word "educational" before "institution", it will not be possible to remove it later, will it, by amendment from the floor?

PRESIDENT EGAN: It would not be possible to remove the word "educational", Mrs. Hermann, that is true. The Chair just wondered, Mrs. Hermann, if the word "educational" being there, if there are any other institutions in the Territory other than educational institutions that would be affected by this.

COGHILL: I rise to a point of information on that. It is in the educational article, Section 1 of the health, welfare, and education, and it should be germane to that section, and that is just clarifying the intent of the Committee.

PRESIDENT EGAN: Is there further discussion of the proposed amendment?

ROBERTSON: Point of inquiry, does the word "private" mean parochial?

PRESIDENT EGAN: Do you mean is it all-inclusive? Is that right, Mr. Robertson?

ROBERTSON: Yes, that's right. I don't understand the word "private".

AWES: Well, I think undoubtedly it does. You will notice before the word "private" comes the word "religious". "Religious or other private educational institutions", so I think that would undoubtedly be any educational institution that is not supported and run by the state.

V. RIVERS: The basis to my objection to that is this, we had some statements here for matching funds for hospitals under the Hill-Burton Act under legislative acts and of the Territorial legislature. Now it seems to me if we are going to put in other educational institutions, it might refer back to religious institutions or other private institutions, but I think that under this section they also want to include perhaps that no public funds shall be paid for the direct benefit of any religious institution, so if "education" qualifies "religious", then also you have not taken care of the fact that they will be authorized or allowed to prescribe for religious institutions. Also, I believe if that does not apply, then we have eliminated certain groups that operate hospitals from benefiting under Hill-Burton funds and similar appropriations. It seems to me the word "education" is not adequate to cover it unless we all feel it is adequately covered in some other part of the constitution.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, I would suggest that before we have a discussion at this point, that if this could be accepted as Miss Awes has suggested, we could go ahead with the suggestions of the article and the intent. We are starting at the end of the article instead of the beginning, and I think we are warping Miss Awes' intent out of shape by getting into a lengthy discussion of what was asked as an addition for clarification and I believe we would find that we would have a much more intelligent approach to this thing if we could start at the beginning of the article and read it through, think it through, discuss it and then make any of these amendments. I would say, too, that if we are going to have a lengthy discussion at this point it might be well to just withdraw the motion, because I think we would be defeating our intent.

PRESIDENT EGAN: The article has been read for the second time in its entirety. Mr. White.

WHITE: I don't wish to complicate the situation, but we may run into this again. If I understand the article that is before us

on the floor, the Committee did not ask to withdraw it, but I think Mrs. Hermann raised a very valid point. If this word is inserted now, we can't move later during the course of the debate to strike it. I would move that the rules be suspended and that the Committee be allowed to substitute its unanimous amendment with the thought in mind that we can then later remove it if during the course of the debate it appears to be the wish of the body to do so.

PRESIDENT EGAN: The Chair stated it could not be removed and the Chair would stand corrected to a certain point on that statement, that is by a suspension of the rules or rescinding of the action of course you could do it.

WHITE: I so move, Mr. President, and ask unanimous consent.

PRESIDENT EGAN: Mr. White, please state the motion.

WHITE: That the rules be suspended and that the Committee be allowed to submit its proposed amendment as though a part of the Committee report.

KILCHER: Point of information. Could it possibly be handled in such a manner as to have the report reconsidered and recommitted and come out again a second time?

PRESIDENT EGAN: The effect of Mr. White's motion under suspension of the rules would accomplish that. Mr. Riley

RILEY: Mr. President. I think this is in line with Mr. White's suggestion that this article of this proposal now before us be considered under a suspension of the rules, simply as a committee substitute for the same article. I think that would put the thing in motion.

PRESIDENT EGAN: Right, and have the word "educational" placed before the word "institution".

RILEY: That would enable us to work either way from that word afterwards.

V. RIVERS: That would cover my objection. I have no objection to that.

PRESIDENT EGAN: If there is no objection then, then it is so ordered, and the word "educational" has been inserted before the word "institution" as if this were a substitute committee report. Now, Section 1 is open for amendment. Mr. Hurley.

HURLEY: Mr. President, I would like to ask a question of the Chairman of the Bill of Rights Committee. Would your Committee consider in using the terminology "direct benefit whether or not that would be a directive or a license to the legislature to appropriate money for the indirect benefits? If so, what was their conclusion?

AWES: I don't think it is a direct order to the legislature to do anything. I think we prohibited what we wanted to prohibit. I don't think that tells the legislature they are supposed to do anything else.

METCALF: I have an amendment.

COGHILL: I rise to a point of order. I submitted an amendment to this section before the noon recess, and it has never been recognized, and I was recognized by the Chair.

PRESIDENT EGAN: Were you recognized for that purpose before the noon recess? If you were, then the Chief Clerk may read the proposed amendment as offered by Mr. Coghill. The Chair feels sorry about that, Mr. Coghill.

CHIEF CLERK: "Section 1, line 7, after the word 'direct' insert the words 'or indirect'."

COGHILL: I move and ask unanimous consent.

R. RIVERS: I object.

METCALF: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the words "or indirect" be inserted after the word "direct" in line 7, Section 1.

WHITE: Point of order. I believe there was a letter presented to the Convention the other day that the Convention agreed to defer the reading of until we reached this section. It seems to me proper we hear it before we consider any business.

PRESIDENT EGAN: Is there such a communication? The Chief Clerk might read the communication that was referred to before we act upon this amendment.

CHIEF CLERK: (A letter from Mr. Don M. Dafoe, Commissioner of Education, enclosing a statement on Section 1 of the article on health, education and welfare to the effect that he believed the statement somewhat oversimplified and setting forth seven points which he believed should be included in the constitution, was read.)

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, the Committee has asked me to speak to this section, and seeing it has been amended I hope you will liberally construe that I am talking to the amendment, but the Enabling Act that we have before us says on page 3, "The provision shall be made for the establishment and maintenance of a

system of public schools which shall be open to all children of said state and free from sectarian control." Mr. President, your Committee on Health, Education and Welfare approached this whole subject of education with great care and consideration. Many methods were sought out to provide and protect for the future of our public schools. We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education. The Convention will note that in Section 1 that the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road blocks. May I draw to your attention further the fact that we have used the words to establish and maintain by general law". This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise. Your Committee has also spelled out the fact that all children shall have the opportunity of schools, and that if the need arises for vocational schools, rehabilitation centers, schools for the retarded and other forms of education, that it is completely possible under this proposal. It is not only wise but mandatory under the Enabling Act to spell out that schools are operated in the public interest by the state and kept from sectarian control. In the third sentence of this section it deals with the public funds. This term was used because we felt that state funds may at times go through many hands before reaching the point of their work for the public, and so the term "public funds" was then used as a guide to every portion of our state financing, borough, city or other entity for the disbursement of these monies. In this third sentence we have used the word "direct". It was spelled out that the maintenance and operation or other features of direct help would be prohibited. This was not intended and does not prohibit the contracting or giving of services to the individual child, for that child benefits as his part of society. This section gives the education department, or other departments, the right to seek out the child, independent of his religious affiliation, to help him to become a strong and useful part of society wherein it touches health and matters of welfare. We would also point out in the light of letters that have come to this floor relevant to the disbursement of funds to denominational or other private institutions, that this does not prohibit the use of funds in other educational matters, and I am sure that no one on the Committee would object to the inclusion of this word as we have given the amendment here to clarify this one statement. Now it reads as it has been amended by the Committee, "No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." We did this to take any doubt away on the part of this Convention of our motives, and we state that where there are welfare cases for children in homes and when there are indigents in hospitals that we do not wish to interfere with that practice of helping to serve people

through those institutions. It is the feeling of the Committee, after long work and thorough study, that these basic recommendations that we have given here on this section on education should be accepted by the Convention.

V. FISCHER: May I ask the delegate a question?

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

V. FISCHER: The article on finance, the proposal on finance, has the following Section 7: "No tax shall be levied or appropriation of public money made or public property transferred, nor shall the public credit be used, except for a public purpose." Now, that is the article and proposal on finance which would govern not only education but all expenditures of the state, and unless there is a very special reason for having separate and different language here, we probably should treat financial matters only in the finance article, so my question to you is, is there a special reason why we should have the third sentence of Section 1 in the health, education and welfare article?

ARMSTRONG: Your Committee on Health, Education, and Welfare discussed this prior to coming to the floor this afternoon. I believe it was our unanimous feeling that this should be taken as a part of education so that it could always be clarified in relationship to this subject. We realize there are two other matters in proposals that deal directly with finance, but we felt that when we came to those things they would have to be correlated with our action at this point. I feel that this matter needs to be clarified here and that was the action of the Committee and their reason for retaining it here instead of postponing it to the finance section.

R. RIVERS: I speak directly to the proposed amendment to the section. As I understand it, or remember it after all this general discussion --

PRESIDENT EGAN: Before you proceed, it seems that some of the delegates don't realize what the proposed amendment is. After the word "direct" insert the words "or indirect". You may proceed.

R. RIVERS: The standard approach is that no public funds shall be disbursed for the direct benefit of any religious institution or parochial schools. The word "direct" is the standard treatment of that subject. Now when you get into the wording "or indirect", then you are getting into an argument as to whether you can even contract with a private institution for the rendering of certain public services because they might say they might make a profit. Now I agree that it might not be interpreted that way, but you are only stirring up an argument when

you talk about prohibiting the disbursement of money for an indirect benefit to a parochial or private institution. You are reaching clear out to ad infinitum in the realms of logic and association. You don't treat it that way, you don't stir up that kind of an argument. If there is a public purpose for which money is to be extended it does not matter if some of it does result in an indirect benefit to some private concern, which may be a contractor, so I definitely don't want to see the words "or indirect" inserted in this section.

COGHILL: Speaking in defense of my proposed amendment, I would first like to say I am very prone to the problem of putting any religious persecution into the Constitutional Convention or among the delegates. It would be the same thing as me trying to convince Mr. Ralph Rivers of the principles of the Republican party, and he in turn of the party he belongs to. I don't believe that is the problem at all. I think that they certainly have a right, a private right or a religious right, or a parochial right under our constitution to have schools. However, I believe that the way our government was set up 175 years ago, that the founders felt that public education was necessary to bring about a form of educating the whole child for civic benefit through a division of point of the home taking a certain part of the child, the church taking a certain part of this education, and the government or state through public schools taking the other part. I adhere to that principle, and I might say that I am the president of the Association of Alaska School Boards and one of the formers of that twelve-point program we developed in Anchorage last October. I think that the problem could probably be well misconstrued here as to the motive and intent. However, I feel that the intent of public education is primarily a state function and does not belong to any private or any one particular group, whether they are in the minority or the majority. I believe we should take direct steps to maintain a free public education not encroached upon by any quarter. I think it might be well to bring out in the argument for the direct or indirect benefit of public funds for education is the matter that is now being faced in Europe and in particular in the Netherlands where they have what is called the form of educational pacification, where the government is splitting the tax dollar among some 500 different church groups providing for a parochial school benefit on an indirect basis, and in a community where there is maybe 500 school children there will be as high as seven or eight small schools scattered out throughout the community, not providing for the fullest benefit in the educational field as far as having a good complete centralized program. I think that sectarianism segregation in our educational system is bad for the children. I do not deny the right of people to have their own schools. However, I think that we should always look to the interest of the founders of our nation when they brought about the separation of church and state. The

problem was brought, and it was brought about by Thomas Jefferson quite well when he said, "If a nation expects to be ignorant and free in the state of civilization, it expects something that never shall be". Therefore out of his deliberations with John Madison they brought about a form of free public education starting in Virginia, and it has come forward ever since under the intent of having the tax dollar only brought to the public educational system. I know there have been many law cases on it, Supreme Court rulings and what not, and I think that the matter still is divided as far as the general public is concerned, as between the sects of religion and not on the principle of preserving the free public education as an instrument of the state.

RILEY: Mr. President, I should like to address a question, if I may, to the Committee Chairman, but meanwhile I wish to commend Mr. Coghill on quoting with favor, Thomas Jefferson. Miss Awes, it runs in mind and I have not the delegate proposal before me, that there was a delegate proposal submitted in language substantially the same as this would read if Mr. Coghill's amendment were adopted. Could you tell me what your experience was in Committee, what the Committee thinking was in rejecting that language?

AWES: That I believe, if I recall rightly, was Proposal No. 2 and submitted by Mr. Johnson. It was carefully considered by the Committee, and Mr. Johnson was requested to come in and speak with us on it. We considered both the words "direct" and "indirect" and we felt that the words "or indirect" would, as Mr. Rivers said, reach out into infinity practically, and probably it is not even known what the results of that might be. We did feel it would shut out certain things that should not be prohibited. For instance, the welfare department was giving certain free care to the children of the community, and it might be administered through the schools. Well, we feared that "indirect" would make it impossible to give any of these welfare benefits, for instance, to children who were in private schools, and we did not feel that any prohibition should go that far, and so the Committee did carefully consider that word and unanimously agreed we should not use it.

RILEY: It has been said the Committee gave it correct attention and rejected it permanently?

AWES: That is right.

RILEY: Thank you.

METCALF: Mr. Chairman and delegates, I very much favor the inclusion in this section of the words "or indirect". As I read the section it refers to our school system and in this book, "Constitutions of the States", there are 16 states that have sections in their constitutions preventing public tax dollars

from being spent for private schools in any way, shape or form. Here is the section from the State of Missouri. The constitution was drawn in 1945, which some of you may have read. It says that, "No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof as such, and that no preference shall be given to or any discrimination be made against any church, or any form of religious faith or worship." I am a firm believer in freedom of religion, and we have been aware in the progress of history, medieval times down to colonial times, that at times there have been persecutions practiced. Those are unpleasant things and they have gone past into history. I am for the free public school system, being a licensed teacher and having taught in public school systems in the Territory. I am also a firm believer in the complete separation of church and state, especially with the use of state money and state property. As I said again, I don't believe that the state property or taxes should be used and transferred to a religious group to be used directly or indirectly to the economic or political religious detriment of some other group or individual, and all activity should be on a free and competitive basis, and if I may just have a few minutes, I have a situation in Seward where a religious group have been given the use of the building and land by the Territory, and they are in competition, economic competition to my economic detriment. It is an actual fact, and I not only speak for myself but I speak for four or five people who happen to be affected similarly, and that is why I am trying to point out that I do not like to see state property or money transferred over to religious groups because persecution often times can come about. In this instance here, they have a Territory land, building valued around 60,000 dollars, and they are in active competition with private enterprise, and they have other advantages -- free snow removal, cheap help, no taxes, and I just point out these little things here that make me very much opposed to the use of state money or property in any way, shape or form by religious groups. I therefore favor the inclusion of this phrase "or indirect".

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I had the opportunity to talk rather at great length with the superintendent of schools in Ketchikan during the Christmas recess on this very subject. He had suggested that the word "indirect" be inserted here, but during the course of the conversation he also said that the public school people were desirous of providing that the standards in the parochial schools be in some manner made equal to those in the public schools. Of course, the only way that could be provided would be through supervision by the State Board of Education. I pointed out to him that the insertion of the word "indirect" here would defeat that purpose and he immediately

said that he agreed and he did not want the word "indirect" inserted.

McCUTCHEON: Mr. President, will the Chair permit a question through the Chair to Mr. Coghill?

PRESIDENT EGAN: The Chair will permit a question through the Chair to Mr. Coghill.

McCUTCHEON: Mr. Coghill, could you cite me at least a few instances how indirect benefit might accrue. Are there specific types of instances within your knowledge of how this would apply? Because of your delivery here a few moments ago I assumed that there must be various types of specific indirect benefits which you would wish to prohibit. I would like to know what they are.

COGHILL: Through the Chair to Mr. McCutcheon, I believe by putting the indirect benefit clause in there that any social welfare, health arrangements that might be made with the state with any private or parochial institution would be on a contractual basis and would be providing a service to the public and not to the institution, and that is the purpose of the indirect clause in there. It would allow them to have a contract to produce or to show full value for the value of money received from the tax coffer, from the funds. In other words, to provide a hot lunch program with Territorial money or to provide a health program in a school, I do not deny that to the private schools because I feel that that is an instrument of public benefit because the child is benefiting from it from a public standpoint, and a contractual agreement between the organization and our organized state would therefore be in effect. Does that answer your question?

McCUTCHEON: In part. Your intent would be then that if some private institution of one nature or another were to supply this particular service under contract to the state that there could be no profit in that as it extended to that institution? That is, they would have to supply that service at the actual cost? That there could be no profit derived from that particular transaction. Is that the point you are making, that it would not prohibit supplying these various types of welfare programs, hot lunches, etc., but there could not be a profit factor involved?

COGHILL: That is correct, because we in the public school system, we are not allowed to make profit on such things.

KILCHER: I think that the position is not clear at all. What Mr. McCutcheon brought up is not clear at all, a benefit is not the same as a profit, so if they don't want any profit, why don't they mention it. I can see where a private school is benefited by getting nonprofit assistance. If, for instance, it is possible

for a private school to get lunch money assistance on nonprofit basis for its children, it may make the difference for them to be able to operate or not. If they are not getting lunch money or such things, they might not be able to operate, so by getting these nonprofit assistances for the children, they are getting benefited greatly. As a matter of fact, the benefit is so great it means survival or not, so I think the issue is not clear. On the principle I think I should be against the amendment because it does not clear the issue at all in that respect.

COGHILL: Maybe to clarify a point for Mr. Kilcher, one thing we want to keep in mind is the fact that the state has set up a public educational system for all children. The people that are sending their children to private, parochial, or any other type of institution are segregating themselves from the public and therefore they should not derive the benefit from the tax dollar. We are providing it. We have spent thousands, hundreds of thousands to provide a good educational system, and if we go to the pacification plan, we are destroying that principle and that in turn answers your interpretation of profit or benefit.

PRESIDENT EGAN: Mr. Gray.

GRAY: If I may ask Mr. Coghill, in reference to your remarks, does your state guarantee to offer a complete educational system?

COGHILL: It certainly will, Mr. Gray, after we write the articles on the legislation.

GRAY: You feel you have a complete educational system today?

COGHILL: I certainly think so.

GRAY: I think there are a lot of areas where a lot of children have no opportunity for public education.

COGHILL: I feel that it is quite a privilege to be a part of a public educational system and be able to criticize it, to be able to criticize our methods and our procedures and to work on those. I will agree with you wholeheartedly, Mr. Gray, that there are lots of things we have to do. However, in my recent trip to Washington, D. C., and being a conferee on the White House Conference on Education, we found with the exception of one disgruntled person, we found that our educational system in Alaska was far above the educational systems of the states. We have a progressive educational system in the sense that we are moving forward. I think one of our biggest thorns is the Alaska Native Service, if that's what you are referring to.

TAYLOR: There has been a lot of sparring around here on this subject. Everybody seems to duck the issue, and I am going to

ask Mr. Coghill a question if I may, through the Chair.

PRESIDENT EGAN: You may, Mr. Taylor.

TAYLOR: Mr. Coghill, what -- in the event that the word "indirect" was inserted into this measure, what effect would that have on the school bus law that is now in effect?

COGHILL: What effect would that have on the school bus law? I know I am up against a pretty good attorney, but I think that will in turn not affect too much of the school bus system in Alaska because it can be on a public work contractual basis, take it completely out of the educational picture, put it on the welfare picture.

AWES: I would like to make one statement. Mr. Coghill suggested that we insert the words "or indirect". The Committee very carefully considered that word "indirect". We were not sure of the far-reaching effects it would have. Mr. Coghill now proposes that he explains what it means. I can't agree with his interpretation in any respect, and he would have us believe from the explanation he has given so far that it means precisely nothing. I don't believe that any court would so interpret it, and I think he should either give us some reason for having it in there or else if it doesn't mean anything, then I think we should take it out, but I am not satisfied with any explanation he's given yet.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Since the Committee considered this at considerable length about this matter of "direct" or "indirect" wording in this particular section, you must have in mind several specific instances where "indirect" might apply in some fashion in a derogatory manner. If you do have such an idea or some particular questions how this word "indirect" might affect adversely to thinking upon your particular section here, I would like to hear some of them. If your Committee has gone into this so thoroughly, there must have been one or two problems that have arisen where there would be some question about including the word "indirect".

AWES: I have already given one very good example, and that is this question of welfare services which are often administered to children through the schools. Mr. Coghill says that the word "indirect" would not prevent these. I very definitely think that the word "indirect" would prevent them. I think that is one very good example.

POULSEN: May I ask Mr. Coghill a question?

PRESIDENT EGAN: You may, Mr. Poulsen.

POULSEN: If the word "indirect" is put in, would that mean there is such a thing as subsidy to hospitals would be eliminated?

COGHILL: Mr. Poulsen, this is an educational article with the educational institution.

POULSEN: It still comes under public welfare, matching funds for instance.

COGHILL: Mr. Poulsen, if you will note that the Committee amended their proposal to have "educational" inserted before institutions, and so this is strictly an educational article, sir.

WHITE: May I direct a question to Mr. Coghill?

PRESIDENT EGAN: You may, Mr. White.

WHITE: Mr. Coghill, are there children's homes, foster homes in the Territory which provide any education at all to the children who are entitled to admission to those homes?

COGHILL: The children's homes that have schools with them, is that what you mean?

WHITE: Are there any such institutions in the Territory of Alaska that provide any education at all to the children admitted to them?

COGHILL: Yes, there is.

WHITE: What would happen to them under your proposed amendment?

COGHILL: What would happen to these institutions now operating?

WHITE: Do any of these receive any public funds either from the Federal government or the Territorial government?

COGHILL: I don't believe they do because the contract schools went out before 1900. They had a form of contract for schools and that went out. I think that all your foster homes would be deriving an indirect benefit or some sort or another, and there are plenty of them.

WHITE: I think your statement could be corrected, but I'm not the one to do it. I'll defer to someone else, but in the event it is corrected, I would like to hear your answer to the question as to what would happen to them under your amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I have here a copy of a memorandum from Henry A. Harmon, Director of the Department of Public Welfare of the Territory to the Attorney General on this very subject, listing

a number of schools operated by private and religious organizations to which the Territory now pays funds through the Department of Public Welfare. They show that such institutions not only include a few Catholic institutions, but also Seventh Day Adventists, Moravian, and Presbyterian. It is very brief. I wonder if I might ask to have it read.

PRESIDENT EGAN: If there is no objection the communication can be read. Mr. Fischer.

V. FISCHER: I think it should be read only if it covers educational institutions.

SUNDBORG: It does only that.

PRESIDENT EGAN: The Chief Clerk may read the communication.

(This letter giving information as to payments made by the Territory to various children's institutions in the Territory was read by the Chief Clerk.)

ARMSTRONG: Mr. President, there are several sources of income in the private institution. First of all, an institution can apply for a surplus of food, and upon the signature of the administrator, that food is made available in a limited quantity. I might give an example of butter, beans, and staples of that type. I think that is given on the basis that no Territorial agency is able to give a large enough sum to a private institution to support that child. I might give you an example of one institution that probably is receiving 900 dollars a year from the Territory, but the actual cost breakdown without new buildings and capital expenditures run in excess of 1300 dollars a year to adequately take care of that child. In that institution there was no educational facilities, that is just housing. Another source of income would be then this Territorial grant of 50 dollars which is in lieu of home care. The child as a ward of the Territory and as such must be put into a foster home or into a private institution. They choose, wherever possible, to put the child in a foster home and let that child go to the private school. If a family situation is so complicated, they want to keep that family structure together and hold that family, the child is placed in a private home. There are a few, very few of the schools that have boarding facilities and educational facilities, but there are some that exist, Mr. White, in the Territory, and most of the grants by the Territorial Department of Welfare are given for the boarding home facilities and not for the education, and I think that could be borne out by the fact that they are looking for a holding situation for the child. The educational facilities are incidental at that particular point, but there are a number of places that are together. I hope that will help.

BUCKALEW: Mr. President, I don't think the question has been answered yet by any of the persons who have spoken on this subject.

If the word "indirect" is in there, it is going to eliminate almost any kind of aid. It will, for example, eliminate the free lunch, eliminate bus transportation, eliminate, for example, if we had a school or an institution where they had a school, it would eliminate the state giving any support to the child because that would be indirect support to the institution. I think when the members vote on it, I think they ought to understand the word "indirect" cuts out everything, just eliminates all kinds of support, and I don't think there is any question about it.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Mr. Chairman, I would like to say that I cannot agree with Mr. Coghill that contracts would not be indirect help. I believe you could construe them to be indirect help. I believe that we should leave these words out of the section, and I believe the Committee has done a very good job. They have considered all angles of it, and I would like to say that I support the Committee resolution.

COGHILL: In closing the argument, I might just leave the thought with the delegates that on this particular subject of the direct or indirect benefit to the private or religious educational institution, would guarantee every citizen of the new State of Alaska that any money diverted from the public funds to any such organization in complete competition with your public institutions, if you will, that there will be a sound contractual agreement between your government and this private institution to provide public service and not to the benefit of the individual institution.

UNIDENTIFIED DELEGATE: Question.

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

CHIEF CLERK: "Section 1 line 7, after the word 'direct' insert the words 'or indirect'."

JOHNSON: I request a roll call.

KILCHER: I am sorry to take another minute. There is one problem that has not come up in this discussion. I am a father of seven children, five of which have had the Calvert course for several years with good results. I understand that the Calvert course could possibly be construed not to be available anymore either if indirect help were not available to a private school. The Territory pays it. My children go to a private school, or most of them. The biggest ones though hike over the road, and the Territory pays an indirect system. It could possibly be construed to include the Calvert course, which is a great problem in Alaska.

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

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

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

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

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

Absent: 2 - Nolan, VanderLeest.)

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

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

WHITE: I have an amendment to Section 1.

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

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

WHITE: I move the adoption of the amendment.

V. FISCHER: I second it.

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

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

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

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

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

PRESIDENT EGAN: Mr. Gray.

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

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

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

PRESIDENT EGAN: Mr. Smith.

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

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

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

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

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

McNEES: I call for the question.

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

JOHNSON: I request a roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

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

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

Absent: 1 - VanderLeest.)

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

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

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

PRESIDENT EGAN: Miss Awes.

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

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

AWES: That is right.

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

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

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

BARR: I second it.

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

ROSSWOG: I would just question the striking of the words "direct benefit". The "support" I can see that, but "direct benefit", it might leave the question wide open again as far as I'm concerned.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Coghill.

COGHILL: I move and ask unanimous consent 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. Mr. Robertson.

ROBERTSON: May I ask Mr. Rivers, what in your opinion would be the implication or result of the proposed change?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: There is some question in my mind as to what interpretation the words "direct benefit" would receive from the courts and just how narrow they would consider a "direct benefit" to be. I notice in other state constitutions, I don't have all the constitutions available, but the wording I provided was identical with the State of Hawaii. In Nevada they say, "No money shall be expended, either city, county or state, for benefit of sectarian purposes.". In the case of Puerto Rico they also have the same broad general language. I hesitate to use the Puerto Rican constitution as a model for I don't care too much for it, but in that highly religious little Commonwealth they have adopted the same principle, but there again I feel that the word "direct" may be interpreted very narrowly by the courts and may lead to a great many funds that would go for support that I personally do not feel should be going to support of sectarian institutions.

TAYLOR: Mr. Rivers, do you not believe that if you leave that word out it will create more confusion than it will, leaving it in?

V. RIVERS: I don't think so. It will leave a little broader field for interpretation. However, Mr. Chairman, I believe that after considering the matter I will withdraw my amendment and ask unanimous consent to do so for the moment.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent that his proposed amendment be withdrawn. Hearing no objection, it is so ordered. Mr. Barr.

BARR: I ask that we now revert to the introduction of proposals.

PRESIDENT EGAN: If there is no objection, the Convention will now revert to the order of business of introduction of proposals. The Chief Clerk may read the proposals as introduced by Mr. Barr.

COOPER: Is this a delegate proposal or committee proposal? Was not the date set January 8?

CHIEF CLERK: That is today.

PRESIDENT EGAN: The Chief Clerk may read the proposal.

CHIEF CLERK: "Delegate Proposal No. 45, introduced by Mr. Barr, DEPARTMENT OF LABOR."

PRESIDENT EGAN: What committee would you like that to be referred to, Mr. Barr? I believe it should go to the Executive, both of those should. Would the Committee on the Executive be the proper committee? If there is no objection the Committee Proposal will be referred to the Committee on the Executive. The Chief Clerk will please read the second proposal.

CHIEF CLERK: "Delegate Proposal No. 45 introduced by Mr. Barr, OFFICE OF THE ATTORNEY GENERAL."

PRESIDENT EGAN: Committee on the Executive.

BARR: Would it be possible afterwards to have that referred also to the Judiciary?

PRESIDENT EGAN: If there is no objection, it will be referred from the Committee on the Executive to the Committee on the Judiciary. If there is no objection it is so ordered. Are there other amendments to Section 1? Mr. Johnson?

JOHNSON: I have no amendment. I would like to direct a question to the Chairman of the Bill of Rights Committee concerning this section.

PRESIDENT EGAN: If there is no objection, Mr. Johnson, you may direct a question.

JOHNSON: Miss Awes, in the second line, the wording "system of public schools" appears. Now in a number of state constitutions I have noticed that they use the word "system of free public schools". It is assumed I imagine that you intended that we should have a system of free public schools here, but you did not specifically use the word, and I wondered if the Committee had considered that matter and if so, why it was left out?

AMES: We did consider the matter. The first two sentences in this section are taken almost word for word from the Enabling

Act. The word "free" was mentioned. We did not feel it was necessary since we say that a "system of public schools shall be open to all children" and since there is already a well set up system of schools which are free, we were afraid that the word, while not necessary, might cause some confusion if it were used. For instance, this section is intended to refer not only to grade schools and high schools, but also other educational institutions. For instance, a state university, and there may be vocational schools, etc., established, which is customary throughout the country to charge tuition for, sometimes less to residents of the state than to other persons. Also, a city running its own school system, I think, customarily charges a small tuition fee to children who come in from other places, and we were afraid if we used the word "free" that it might raise questions whether or not certain practices like this should be continued or considered. We did not think that was a matter for the constitution.

JOHNSON: Thank you.

HURLEY: I would like to speak on the matter of personal privilege and ask unanimous consent.

PRESIDENT EGAN: You may, Mr. Hurley.

(Mr. Hurley spoke under a question of personal privilege regarding the article on health, education and welfare.)

PRESIDENT EGAN: Are there other amendments to Section 1, article on health, education and welfare? Mrs. Hermann.

HERMANN: Mr. President, I have an amendment to follow Section 1. I want to change Section 2. I have this amendment, it is neither an amendment to Section 2 nor Section 1. I just want to get a new Section 2 and renumber it.

PRESIDENT EGAN: You are asking that Section 2 be deleted?

HERMANN: No, not deleted, just moved down. This actually belongs under the education section, that is the reason I put it in. It has nothing to do with what is already written, however.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment as offered. Mr. Ralph Rivers.

R. RIVERS: Mrs. Hermann wants to inject some new material between the sections. What she has so happens to come in logical order between Sections 1 and 2. We are taking these up section by section, but are we not at liberty to interject new sections in between sections?

PRESIDENT EGAN: She wants to inject a new Section 2 and renumber 2, 3, 4, and 5. The Chair is just hard at getting it through his head. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Add a new Section 2 and renumber succeeding sections: 'The state shall provide for a Unified Library Service.'"

HERMANN: I move the adoption of the amendment.

PRESIDENT EGAN: Mrs. Hermann moves the adoption of the proposed amendment.

HERMANN: I ask unanimous consent.

BUCKALEW: Objection.

TAYLOR: I second the motion.

PRESIDENT EGAN: The motion is open for discussion. Mrs. Hermann.

HERMANN: I very probably should have submitted this suggestion to the Committee on Preamble and Bill of Rights, but it was not made to me until after they had turned in their report, and it is submitted at the request of the present Territorial Library Board that we open the way for the establishment of a unified library service for the State of Alaska, which is in keeping with the unified library service that we have recently established for the Territory of Alaska, and it properly comes under the educational article of the constitution, so I have submitted it for that reason. I shall be glad to answer any questions anyone wishes to ask.

DOOGAN: I would like to ask Delegate Hermann a question. Don't you suppose this could very easily be handled by the legislature rather than making it a constitutional provision?

HERMANN: It provides that the legislature shall do it, that is draw up all the regulations concerning it. It was just simply giving them the authority to do it.

SUNDBORG: May I address a question to Mrs. Hermann? Would there be anything in the constitution, if adopted without your proposed amendment, which would prevent the legislature from doing that at any time it pleased to do so?

HERMANN: Frankly, Mr. Sundborg, I don't know, but I submitted the amendment at the request of the Library Board. They think they need the authority.

McNEALY: If I could address a question to Mrs. Hermann. I am probable a little thickheaded today of all days, but what is the meaning of the word "unified"?

HERMANN: The last legislature established for the Territory of Alaska what is designated as a "unified library service". It means a Territorial library service under the direction of a

Territorial librarian that seeks to get uniformity in the operations of libraries throughout the Territory. It also has as one of its major objectives the collection of documents and materials to include in all of these libraries. I think if the assembly will remember, we had a letter some time back from Miss Phelps who is the Territorial Librarian, suggesting that some place be made the repository of everything that is of any historical importance that came out of this Convention, and that is what she is attempting to do for all the libraries, so that in every community we will have libraries having material available that deals with the Territorial development in all of its forms, as well as the customary library material. It also seeks to set up uniformity in operations and proceedings. As most of you likely know, we have a Territorial Library Aid bill whereby we contribute matching funds to certain libraries for the purpose of acquiring books and other periodicals, and all of that is supposed to be reduced to a uniformity of procedure that will do away with much of the confusion that has resulted from every little library and every little place setting up its own rules of procedure and probably not adhering very closely to them after it sets them up.

RILEY: Mrs. Hermann, would you have any objection to the journal showing that the amendment offered by Mrs. Hermann is by request?

HERMANN: I think it was Mr. Barr the other day who said he never introduced anything by request and I am trying to emulate Mr. Barr's noble example. I have no real objection.

MARSTON: May I ask, Delegate Hermann, did you say that the Territory could do all this without us going through the operation here?

HERMANN: Frankly, I said that I did not know. I have not given the question a great deal of thought. I just received this request in the last day, and the Library Board feels that the authority is necessary before the state can pass a law creating it.

TAYLOR: Mrs. Hermann, do you not believe that due to the fact we now have in effect a law providing for a unified library system, it would naturally carry over into the state, be a state law?

HERMANN: If it is re-enacted by the first Territorial or State legislature.

TAYLOR: If the legislature re-enacted the present laws, it would not need this?

HERMANN: I might say there is a provision in the Hawaiian Constitution providing for this very thing and that is probably what induced the sponsors of this request to ask it.

BARR: I am greatly in favor of establishing public libraries. However, there is great doubt in my mind as to whether this is constitutional material. We do have a law establishing library boards which will carry over to the new state, of course, and if we put such a proposal into the constitution, it will be permanent. If at some future time we decide that conditions are so bad we can't afford libraries or want to abolish them, we can't very well do it if it is in the constitution. I would like to point out, the library board is one of the minor departments at the present time, and in the report submitted by the Committee on the Executive Branch which deals with the establishment of the various departments of the government, no mention was made of many departments much more important than a library board for the simple reason that it was supposed the legislature would make laws relating to it.

PRESIDENT EGAN: Shall the proposed amendment as offered by Mrs. Hermann be adopted by the Convention? Mrs. Hermann.

HERMANN: I claim the prerogative of making the final remarks about this brainchild of mine, and I want to say in answer to Mr. Barr's statement, except for the public school system of Alaska, I don't think that anything is more important than library service. Maybe he does not read as much as I do, maybe he reads more but buys his own, but I feel very strongly that the entire cultural pattern of a state or any unit of government is set by the library facilities it offers to the people of that country, and I hope that you will pass this amendment because just for the very reason that he says that we might sometime feel too poor to afford a library service. I don't think we can ever be too poor to afford a library service, and I don't think there is anything in our government, aside from our public school system, that is so valuable to the citizens as a whole as a library service.

McNEES: Roll call, please.

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

STEWART: May we have it read?

PRESIDENT EGAN: Could the Chief Clerk please read the amendment at this time.

CHIEF CLERK: "Add a new Section 2 and renumber succeeding sections: 'The state shall provide for a Unified Library Service'."

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

Yeas: 16 - Armstrong, Boswell, Coghill, Collins, Cooper, Doogan, Hermann, Hinckel, Johnson, Laws, Londborg, McNees, Nerland, Robertson, Sweeney, Walsh.

Nays: 37 - Awes, Barr, Buckalew, Cross, Davis, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hurley, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, Marston, Metcalf, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Taylor, White, Wien, Mr. President.

Absent: 2 - Hilscher, VanderLeest.)

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

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

BUCKALEW: I have an amendment, Mr. President.

PRESIDENT EGAN: What section?

BUCKALEW: Two and three.

KILCHER: I also had an amendment to Section 3 on the table.

PRESIDENT EGAN: Mr. Buckalew had been recognized, Mr. Kilcher, but the Chair will remember that. The Chief Clerk may read the proposed amendment as offered by Mr. Buckalew.

CHIEF CLERK: "Strike Sections 2 and 3 and renumber Section 4 to read Section 2."

BUCKALEW: I move the adoption.

METCALF: I second the motion.

BUCKALEW: Mr. President, I was on the Committee, but after more mature consideration I believe that Sections 2 and 3 are absolutely unnecessary. The state has the power under the general welfare clause. It really struck me in the face when we got Delegate Hermann's proposal about unified library board. I think Sections 2 and 3 are about the same category. It is not necessary to put it in there, and if the state has got the power I believe that it should be stricken along with the idea we are not trying to legislate, just trying to write a constitution.

ARMSTRONG: I object. I feel that these sections give a check and a philosophy we need within the constitution. I think to delete them would be shirking our duty and pointing the way in

both welfare and public health. These are important parts of our living day by day, and when we say the promotion of the protection of public health, we weighed those words. When we came to Section 3 and we said, "the standard of living compatible with health and human dignity", we weighed those words, and I think we put them in there because of the philosophy that we held that these departments should carry out. I believe they should be retained.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I want to say one more thing. I would direct the delegates again to read Section 3. That sort of frightens me a little. I don't know what it means, even after being on the Committee, -- "a standard of living compatible with health and human dignity". I don't know what that is going to do to the state treasury, but I see no reason for having either one of the sections in view of the fact that we have a general welfare clause.

MARSTON: In the name of brevity and shortness, on the same condition I turned down Mildred Hermann, I am going to vote along with Buckalew on those two deletions.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I believe that if we eliminated these two sections, Sections 2 and 3, that this constitution would receive scant consideration from the voters of the Territory of Alaska who vote upon confirmation, and if they did happen to pass it, it would receive scant consideration from Congress, that would omit two such important articles of the constitution.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I am amazed at the statements made here this afternoon by some of our delegates. Is this the same Mrs. Hermann who time after time asked us not to include statements that are purely legislative? Is this the same Mr. Marston who has said he would vote against all amendments? Is this the same Mr. Buckalew who sat for five weeks or so on the committee which drew up this article and signed its report and here this afternoon they are all reversing their positions? I ask the delegates to note that Section 2 says, "The State shall", so that means one thing. Section 3 says "The State may". If we knock them out, as Mr. Buckalew suggests, it may be that the state has the power to do such things, but the legislature may either do it or not at its discretion. But if we leave them in the legislature must provide for the promotion and protection of public health.

BUCKALEW: I have the right to close. Of course I am the same Mr. Buckalew who has been here all along, but I might add that

the same Mr. Buckalew has learned a little more about constitutional law as he has gone along. As I say, after more mature consideration I think both sections are superfluous, and the general welfare clause is inclusive, and I see no necessity for putting it in the constitution. I think the people of Alaska will vote for the constitution whether it is there or not. It shouldn't be in there and I want to vote it down.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Buckalew be adopted by the Convention?" All in favor of the proposed amendment being adopted will signify by saying "aye", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. Kilcher.

KILCHER: My amendment is for Section 3. Someone might have one for Section 2.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I have no amendment, but I have a question which I would like to direct to the Chairman of the Committee. Would the language of Section 2, as it now stands, permit programs of state health insurance? For instance in the nation of Norway there is a system under which the nation by taking money out of your pay check, the pay check of each employee, every month or week or whenever he is paid, sets up a statewide system of public health benefits. Great Britain does the same thing. Now would the same thing be permitted under the language of Section 2 in your opinion?

PRESIDENT EGAN: Miss Awes.

AWES: Well, to tell the truth about it, I had not considered that particular problem. I think this section would probably permit it unless some other section prohibits it.

PRESIDENT EGAN: 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, I wish to call attention to the fact that we have today spent 47 minutes over and beyond the period of time called for by motions to recess.

PRESIDENT EGAN: We have before us Mr. Kilcher's proposed amendment to Section 3 of this article.

CHIEF CLERK: "Strike all of Section 3 and substitute the following: 'The State may provide for the general welfare.'"

SWEENEY: Is that a new Section 2 or 3?

CHIEF CLERK: "Strike all of Section 3 and substitute the following: 'The State may provide for the general welfare.'"

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

KILCHER: I move the adoption.

ROBERTSON: I second the motion.

PRESIDENT EGAN: Is there discussion? Mr. Coghill.

COGHILL: I would like to inquire of the maker of the motion, is he providing that the state will provide for the general welfare?

KILCHER: I did not hear.

COGHILL: Are you providing that the state shall provide for the general welfare of the people of the state?

KILCHER: May provide. Mr. President, I think in line with our need for brevity and also with our past attempts of being too restrictive by permitting and yet not forcing the state to provide for the general welfare, we are in line with the United States Constitution. The general welfare clause is stressing the words "general welfare only. Everything else is inconsequential, and that is perfectly sufficient in my opinion for all that the state may decide to do.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: The very first article in the bill of rights takes care of that. That is what I interpret it as meaning, the general welfare.

KILCHER: I agree with Mrs. Nordale to the extent that I also was in favor of striking Section 3 under Mr. Buckalew's amendment, but since it may not hurt to make mention of this matter in the article on health, education and welfare, I propose that we include it in this brief formulation.

NORDALE: My point was I was wondering if he means the same thing that is meant in the first article of the bill of rights. Is that what you mean by your amendment?

KILCHER: If the same words are used, it must necessarily mean the same thing, I haven't read it.

NORDALE: I believe the original article means something else. You mean you are repeating what is in the original, that is what you want? To repeat the first article in the bill of rights?

KILCHER: Well, I am not so sure of that since it is under the article of health, education, and welfare, it might have a slightly narrower meaning. This is such a vague article, impossible of definition, that I think this proposed article would solve the problem.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: To me the words "general welfare" do not have the connotation at all of public welfare. The term "general welfare" is so much broader in its meaning to what "public welfare" is I can't see that the amendment is material to the section to which it has been made.

PRESIDENT EGAN: Mr. Barr.

BARR: I just wanted to point out the difference between these two as I see it. Section 1, they say that this constitution is to promote the general welfare. We are speaking of the constitution here. This other section says the state shall provide for the general welfare. General welfare generally means, of course, all welfare means health, safety, etc. In Mr. Kilcher's amendment he provides that the state shall provide it.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: This Section 3 which is one reason why I seconded Mr. Kilcher's motion, is that I don't know what person is unable, what extent of inability do they have to have to be unable, and I don't understand what a standard of living compatible with health and human dignity is; whose health and whose human dignity? We all have different modes of living, and what comparative standards are you going to put in order to comply with that section? Mr. Armstrong, you explained that a little bit.

ARMSTRONG: I think that when it says that the state may provide for this system of public welfare for persons unable to maintain the standard of living, there are all types of people who can be considered indigent. There isn't any way of pointing that out, someone who has to go to a TB ward is an indigent, yet he may have what seems to be a normal adequate income, yet the loss of his income while in the TB sanitarium makes it absolutely impossible for him to pay the bills that would be involved, so this

would be a sliding scale on the standard of living, his needs and health and human dignity. I think we were trying to get away from a clause that might indicate that you had to be a pauper and really down and out before you would arrive at the place you could crawl up to the welfare department for help. There are many areas of life where a little help to a widow, to an orphan, to a pioneer who needs help, brings them to the place of self-respect, and dignity and self-respect certainly go hand in hand.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, my idea of public welfare connotes a system provided by the state or established by the state for the alleviation of various people who are unable to make a living, and now we are saying the state may provide for public welfare for persons unable to maintain a standard of living. Now, of course, that does not connote a welfare for persons if you use it as a system of public welfare for a certain class of people of our population. It seems to me that that section would possibly be a little plainer and would not be open to the construction that has been placed upon it this afternoon if we would provide for public aid for persons unable to maintain a standard of living compatible with health and human dignity, it would be public aid. We have a system for public welfare but the aid given by the public welfare would be the people who are unable to help themselves.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: My point is that if a sick person is unable to maintain a standard of health compatible of health, not perhaps because of any money but because he is afflicted with a disease, and this leaves it open it seems to me that anyone who has a disease who can't maintain a condition compatible with health and yet, we are going to extend them public welfare. Why don't they say "indigents or people who are ill or unable to provide for themselves"? Why don't they put it in plain English? No one can construe these words. I know what I mean by human dignity, but a person on a higher social scale has another standard for human dignity and someone else, another. What standards are you going by?

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I think Mr. Robertson's argument is that the language would permit, say a millionaire to be given assistance.

ROBERTSON: I don't see why.

HELLENTHAL: It says if you are unable to maintain the standard, that means unable from any cause. I think that would clearly

throw out the millionaire and I think any court or any person would interpret it that way. If you are unable from any cause whatsoever, but if you are able then there is no assistance. You are able because you are a millionaire, though sick.

PRESIDENT EGAN: Miss Awes.

AWES: I would like to make one further comment to Mr. Robertson's objection. I think that the words "public welfare" themselves would prohibit an interpretation that a millionaire would not be entitled to help. The words "public welfare" have come to have a very definite meaning in our society today, and I think that is the meaning that should be given here. If you just give "public welfare", those two words, their ordinary meaning, I don't think the question would come up.

HERMANN: Point of order. Mr. Kilcher's motion is to substitute "general welfare", and to strike that whole section and substitute a new section dealing with "general welfare" and I don't think anybody is speaking on the motion.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I looked up my reference, and considering that I drew up this amendment hastily, I would suggest that somebody amend "general welfare" to "public welfare", that is actually what I had in mind, or I withdraw my motion. That is what I had in mind. I will be very amenable to that if somebody wants to amend it.

PRESIDENT EGAN: Is there such an amendment offered? Do you ask unanimous consent, Mr. Kilcher, that the word "general" be changed to "public"?

KILCHER: Yes I do.

PRESIDENT EGAN: Is there objection to the change Mr. Kilcher asks for? Hearing no objection it is so ordered and the proposed amendment has been amended. Mr. Johnson.

JOHNSON: Point of inquiry. Miss Awes, along the line of your statement that you do not believe that this section would apply to a millionaire, I agree that under most public welfare systems millionaires would not be applying or should not be applying, but suppose that a millionaire lost his money and did not have any money at all and came to the public welfare department. Under the phraseology you have here, "to maintain a standard of living compatible with health and human dignity", now would he be expected to get sufficient assistance to maintain his former standard of living or human dignity. I mean, could it be construed that way?

AWES: I don't think so. I think we are getting into some rather farfetched illustrations. I think the only purpose of this section is to give the legislature a broad general authority to provide for the public welfare and, as I said before, public welfare, it is generally known what that means, and I think it is very unlikely that any other construction would be put upon it.

JOHNSON: Perhaps my illustration was farfetched, but I intended it to be, and I am wondering if some other words might be substituted to the word "dignity" that might lend itself to less confusion.

LONDBORG: I have been wondering along that same line too. If I might ask someone of the Bill of Rights Committee, what other kind of dignity would there be other than human dignity?

HARRIS: Point of order. If Mr. Kilcher's motion goes through the way it is now there won't be any word "dignity". There will be just a period after 'welfare'.

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

CHIEF CLERK: "Strike all of Section 3 and substitute the following: 'The State may provide for the public welfare.'"

ARMSTRONG: I am afraid that that phraseology is far too broad and you are saying "for the public welfare" but the connotation does not tie it down to the establishment of a department, and it does not give the instructions as to the philosophy we have here in mind. I think that you need the retention of this section.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Kilcher be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 3? Mr. Taylor.

TAYLOR: I have a short amendment I would like to offer, and before the word "public" on line 11 of Section 3 I would like to insert "a system of" of, so that it would read, "The state may provide for a system public welfare for persons unable", etc. I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the proposed amendment be adopted.

UNIDENTIFIED DELEGATE: Objection.

PRESIDENT EGAN: Objection is heard.

TAYLOR: I so move.

ARMSTRONG: I second the motion.

PRESIDENT EGAN: The Chief Clerk will please read the section as it would appear if the proposed amendment was adopted.

CHIEF CLERK: "The state may provide for a system of public welfare for persons unable to maintain a standard of living compatible with health and human dignity."

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

MARSTON: I would like to ask Mr. Taylor what human dignity means. I like it, I am for it, and I want to know what it means.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Maybe I might give an illustration of it. I think any time when a person is reduced to the point where they have to beg and feel that they are an object of charity, they have lost their dignity, and we think that the people of the State of Alaska should not be reduced to that condition where you have got to be a beggar or a pauper or feel you are an object of charity. When you do you have lost your human dignity.

GRAY: Mr. Chairman, I would like to ask the mover what difference is "a system of public welfare", what difference does that make in the article?

TAYLOR: The reason I put that in is that because there may be many different matters touching public welfare. We might have such as we have today, we have the relief of the widows, we have dependent children, we have relief for the orphans, for the cripples, we have rehabilitation for persons who have partially lost their ability to earn or gain for livelihood, and other matters which would come under this public welfare, so it would be a system that would embrace all of those things that would go into maintaining the health and human dignity of our people who are handicapped or unfortunate.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, since the section starts with the word "may", I don't see why these added words "a system of" should be included. Certainly the state may do that in any case, even if the words are not in here, it might do that. I can see a reason, if it should say "shall", and make it mandatory, but since it is optional, you can certainly expect as the situation requires that the state should do that and it is superfluous.

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

CHIEF CLERK: "Section 3, line 11, after the word 'for' insert 'a system of'."

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

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

Yeas: 26 - Armstrong, Boswell, Coghill, Cooper, Davis, H. Fischer, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Knight, McCutcheon, McNealy, Marston, Metcalf, Nerland, Nordale, Riley, R. Rivers, Roberston, Rosswog, Stewart, Sundborg, Taylor, Walsh.

Nays: 27 - Awes, Barr, Buckalew, Collins, Cross, Doogan, Emberg, V. Fischer, Gray, Hurley, Johnson, Kilcher, King, Laws, Lee, Londborg, McLaughlin, McNees, Nolan, Peratrovich, Reader, V. Rivers, Smith, Sweeney, White, Wien, Mr. President.

Absent: 2 - Poulsen, VanderLeest.)

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

PRESIDENT EGAN: So the "nays" have it and proposed amendment has failed of passage. Are there other amendments to Section 3? Mr. Buckalew.

BUCKALEW: Mr. President, I was out in the hall here for a minute, but I understand somebody already offered the amendment that was defeated to delete the words "persons unable to maintain a standard of living compatible with health and human dignity". I did not hear the argument on it, Mr. President.

PRESIDENT EGAN: You should have been here, Mr. Buckalew.

PRESIDENT EGAN: Would the Chief Clerk please read the section as it appears right now.

CHIEF CLERK: "Section 3. The State may provide for public welfare for persons unable to maintain a standard of living compatible with health and human dignity."

BUCKALEW: Could I have the privilege of the floor for a minute?

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

(Mr. Buckalew was granted the privilege of the floor.)

PRESIDENT EGAN: There were quite a few arguments at the time we had the amendment. Are there other amendments to Section 3? If not, to Section 4? Mr. Victor Fischer.

V. FISCHER: Mr. President, I have an amendment on the Clerk's desk.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment. CHIEF CLERK: "Strike Section 4."

V. FISCHER: Mr. President, I would like to ask unanimous consent for the adoption of this amendment and would like to offer a brief explanation, if I may.

PRESIDENT EGAN: Mr. Fischer asks unanimous consent for the adoption of the amendment.

ARMSTRONG: I object.

V. FISCHER: I so move.

HURLEY: I second the motion.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Originally I submitted a delegate's proposal on health, education and welfare including this Section 4, and I appeared before the Committee on the Bill of Rights and discussed the inclusion of this section. At that time I was under the understanding that it was necessary for this section to be contained in the constitution to authorize slum clearance in Alaska. A number of states have had their statutes for slum clearance in urban redevelopment projects, such as is now going on in Fairbanks and is proposed in Ketchikan, Sitka, Juneau, Anchorage, and Haines. They have had similar projects declared unconstitutional because they had no express provision authorizing slum clearance. Therefore, I appeared before the Committee and urged the inclusion of this section as it presently stands. Since then we have obtained additional material from the Housing and Home Finance Agency in Washington, which agency is in charge of providing federal assistance for urban redevelopment. The legal matter forwarded by the HFFA shows clearly that our constitution is broad enough in every aspect to authorize slum clearance in similar urban redevelopment programs without a specific enabling clause such as this. If you will note, I have emphasized slum clearance. There has never been any doubt about public housing. It is definitely authorized under the welfare clause, so there is no need for that at all. Since there is no legal doubt about the legality of slum clearance under this constitution, I introduce this motion to strike Section 4, since I, even when I first proposed it, it seemed to me as matter preferably not to be covered in the constitution.

GRAY: I withdraw my objection.

PRESIDENT EGAN: Miss Awes.

AWES: I just wanted to make a brief statement about the action of the Committee in putting this section in. The section first came to the attention of the Committee as a part of the proposal made by Mr. Fischer and Mr. Fischer appeared before the Committee and gave his reasons, which are similar to what he gave just a few minutes ago, and the Committee was convinced, so I think the body should know that it was on the basis of the information supplied by Mr. Fischer that it was put in here.

HELLENTHAL: I don't think any of the Committee members have any objection to Mr. Fischer's proposal now, because it was at his insistence that it appeared in the constitution. Unless I hear some objection from some of the Committee members, I shall support Mr. Fischer's proposal.

PRESIDENT EGAN: You are absolutely positive that it is not necessary?

V. FISCHER: Yes. Since Mr. Gray removed his objection, I renew my unanimous consent request.

TAYLOR: I object.

NORDALE: May I just ask Mr. Fischer a question?

PRESIDENT EGAN: You may, Mrs. Nordale.

NORDALE: Is there any possibility that some provision might possibly creep into the finance section that would make it necessary to have this in this particular section?

V. FISCHER: No, because our health and welfare clauses are broad enough. We have a condemnation clause for public purpose and appropriation for public purpose, so between all of those factors there would be no restrictive provisions.

PRESIDENT EGAN: Mr. McNees.

McNEES: In the event that this suggested amendment is not passed, I think we are going to have to rework it anyway for the simple reason that very definitely it is stated here that the state may provide for and assist in the development of substandard housing, and I think we are going to have to rephrase that in case the amendment is not passed.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Fischer be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye"; all opposed, by saying "no". The "ayes" have it and the proposed amendment has been adopted by the Convention. Are there other amendments to Committee Proposal No. 7? Mr. Taylor.

TAYLOR: I have an amendment on the Clerk's desk.

CHIEF CLERK: "Add a new section known as Section 4 which shall read as follows: 'In all matters of public welfare the legislature may provide by law in cooperation with the United States, or other states.'"

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

TAYLOR: I move the adoption of the amendment and ask unanimous consent.

McLAUGHLIN: I object.

McNEALY: I second the motion.

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

LONDBORG: It is kind of long to remember.

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

CHIEF CLERK: This first part is the subhead, is that right, Mr. Taylor?

TAYLOR: Yes.

CHIEF CLERK: "Section 4. In all matters of public welfare the legislature may provide by law in cooperation with the United States, or other states." And the subhead on the margin is "Cooperation with Federal and other State Governments".

PRESIDENT EGAN: Mr. Londborg, did you object to the length?

LONDBORG: I have a copy now. No objection.

McLAUGHLIN: Mr. Chairman, I object on the grounds that are reasonably well known to the members of the Executive Committee, members of the Resources Committee, forgive me, not Resources Committee, but members of the Local Government Committee, and reasons known to the members of Style and Drafting. That is the specific provision in the Executive Article providing for agreements, and in a much broader scope than this, of all natures, agreements of any nature between the state or between any local government units and the states and the United States or any other nations. We will have a complete reduplication, and I have not consulted with any members of the committee, but I think it is inappropriate to consider this matter at this time. It will arise again more properly under the executive article and probably most properly under any miscellaneous provisions in the constitution.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: That is a correct statement. The executive has provided in a broad general clause for cooperation with other parts of government, including local, state, and national, and in cases where it will be permitted, with other governments. I don't think there is any need for this article to cover the provision. We already have it broadly covered.

TAYLOR: In view of the statement made by Mr. McLaughlin and Mr. Rivers, that this is a blanket provision along the same lines which is going to be in the future article, I would like to ask unanimous consent to withdraw the amendment.

PRESIDENT EGAN: Mr. Taylor asks unanimous consent to withdraw his proposed amendment. Is there objection? Hearing no objection, it is so ordered. Mr. Victor Rivers.

1550

V. RIVERS: I would like to ask unanimous consent to revert to the introduction of proposals.

PRESIDENT EGAN: If there is no objection, the Convention will revert to the introduction of proposals.

KILCHER: I object.

PRESIDENT EGAN: You object to the reverting to the introduction of proposals at this time?

KILCHER: It will take only two minutes and we will be done with the whole article anyway. I would ask Mr. Rivers to wait. I have an amendment.

V. RIVERS: I will yield to Mr. Kilcher.

PRESIDENT EGAN: The Chief Clerk will please read Mr. Kilcher's proposed amendment.

CHIEF CLERK: "Section 3, lines 11 and 12, strike the words 'public welfare'."

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

KILCHER: I move that we adopt the amendment and ask unanimous consent. It is probably a matter of Style and Drafting because it is just a duplication of a definition.

PRESIDENT EGAN: Is there a second to the motion?

SUNDBORG: I object.

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

KILCHER: I so move.

PRESIDENT EGAN: Is there a second to the motion?

ROBERTSON: May we have it re-read?

CHIEF CLERK: "Section 3, lines 11 and 12, strike the words public welfare'".

PRESIDENT EGAN: Is there a second?

V. RIVERS: Point of order. I heard a second from Mr. Londborg.

PRESIDENT EGAN: It has been moved and seconded that the proposed amendment has been adopted. Mr. Kilcher.

KILCHER: I have absolutely nothing against public welfare. Even contrary, I was afraid possibly Style and Drafting might not catch it, and if they did it is a matter of language, and that is why I proposed it to bring it to the attention and have it drafted, even if the amendment fails. It is not a substantial change, it just saves three words in the constitution. If we say "the state should provide" that is what public welfare is.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Kilcher be adopted by the Convention?" All those in favor of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to the article on health, education and welfare? Are there other amendments to Committee Proposal No. 7 in its entirety? Mr. Victor Rivers.

V. RIVERS: I am not sure whether we had a record vote on Section 1 or not. Did we?

PRESIDENT EGAN: I am sure there was a roll call vote on that, Mr. Rivers.

CHIEF CLERK: Section 1 of this article?

PRESIDENT EGAN: On the proposed amendment, Mr. Rivers? V.

RIVERS: Yes.

PRESIDENT EGAN: The Chair feels certain there was a roll call vote on it.

TAYLOR: Two of them.

PRESIDENT EGAN: I believe you are right, Mr. Taylor.

COGHILL: I think what Mr. Rivers is referring to is the insertion of "education" before "institution" on the recommittal of the Committee.

CHIEF CLERK: That was accepted as a committee report.

SUNDBORG: It was unanimous consent.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: It was turned back to the Committee and the Committee resubmitted the article with that word in it.

PRESIDENT EGAN: You are correct, Mr. Hinckel. Are there amendments to the proposal? Mr. Londborg.

LONDBORG: Is it ready to pass now from second reading?

PRESIDENT EGAN: It is ready to go now, if there are no other amendments, to the Committee on Engrossment and Enrollment, which would take it out of second reading so far as amendments are concerned without a suspension of the rules. Mr. Londborg.

LONDBORG: I have been thinking about this one vote on Mr. Coghill's amendment, and I wonder if we gave sufficient thought to the amendment. I would like to give notice of reconsideration of my vote on this particular amendment.

PRESIDENT EGAN: In inserting the word "indirect"? Do you serve notice of reconsideration of your vote?

LONDBORG: I do so.

PRESIDENT EGAN: Let the record show that Mr. Londborg gives notice of reconsideration. Mr. Sundborg.

SUNDBORG: I move and ask unanimous consent that we take a five minute recess.

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

RECESS

FIRST VICE PRESIDENT: The Convention will come to order please. We have Committee Proposal No. 5 before us and ask the Secretary to please read it at this time. Mr. Johnson.

JOHNSON: I was under the impression that Mr. Victor Rivers had asked us to refer to the introduction of proposals.

FIRST VICE PRESIDENT: I'm sorry. Mr. Rivers.

V. RIVERS: I so asked and that was objected to for a period of two minutes, so I understand it is now in order. The objection was merely to finish that last amendment.

CHIEF CLERK: "Delegate Proposal No. 46, introduced by Mr. Victor Rivers, ORDINANCE: The legislature shall establish one or more agencies of State government to regulate public utilities in the public interest."

FIRST VICE PRESIDENT: It shall be referred to the Ordinance Committee. You may proceed with Proposal No. 5.

(The Secretary read Committee Proposal No. 5 at this time.)

NORDALE: Mr. President, I would like to ask a question before we start on this article. I was under the impression that the article on the legislative branch was to set up the structure of the legislative branch of government, and I would like to have this clear before we start working on any of these articles. It occurs to me there are several things instructing the legislature what to do and what not to do, and my impression was that it was a case of setting up a legislature, not necessarily telling what to do. If I am wrong I would like to know it before we start.

FIRST VICE PRESIDENT: I wonder if the Chairman of the Committee would answer that. Mr. McCutcheon.

McCUTCHEON: I think I can say this, keeping in mind that our Committee is practically unanimous on the subject of things that had to do with actual legislation and the composition of the houses, those matters which pertained to bills insofar as they pertained to the legislature and the handling of them were properly a legislative matter. We have included several sections in this group which might be borderline propositions, which we have lifted from the Enabling Act and in this instance I refer to Senate 50, and included them in here fearing that they may not have been included elsewhere. They will probably be in conflict with other sections that will be offered by other committees and I think again I can speak, that our Committee will have no objection in removing those things which are in conflict to the same type of material being in other articles.

LONDBORG: One of the things I think that will come up right away, and that is the overlapping of material relative to apportionment. Could I ask a question of the Chairman of the Legislative Committee? How do you feel on that? In other words, we are going to be doing with some things that may freeze a certain thing, and then come to apportionment and find it otherwise.

McCUTCHEON: In this instance there were a good number of our Committee who sat in and listened to the testimony that was offered and the argument and testimony that took place in the Committee on Apportionment and Reapportionment, and it appeared to our Committee that we would have to settle upon some sort of an arbitrary figure for the number of legislators to be in the legislature. It appeared to us at the time we drafted this measure and also from the various proposals that were entered by most of the delegates that these figures came most closely to the general composite that was being developed at that time. In other words, the Apportionment Committee appeared to be thinking in terms of a figure very close to this. It may have been a little more, or may have finally developed to be a little less, and a number of the proposals that were offered by committees fell in this same

general category, so our committee seized upon these things as a point in which to begin in discussing the matter.

LONDBORG: That answers it at least in part. I can see the difficulty in having split the two, the Legislative and Apportionment, into two different committees. I think some constitutional conventions deal with them together for the purpose of amending one or the other and I think we should keep that in mind, that if we fix something and pass through second reading that it may affect our apportionment later.

HELLENTHAL: Might I suggest as far as apportionment is concerned, I can see that there might possibly be some conflict between Section 1 and the last section which is, I believe Section 25, and that's all. There are many ways it can be handled. I would not like to see a situation develop where we might agree tentatively with Section 1 and Section 25, and then find it would take a two-thirds vote to make a change when the same matter came up before a committee that was properly told to handle the very same matter. Might I suggest that the matter be referred to save time on the floor to the Rules Committee for suggestions as to how any trouble can be avoided so that the rights to amend might be preserved say, after we have finished dealing with the legislative matter but still not run into the restrictions of two-thirds, and I would like to move that the matter of possible conflict between the two committees, namely Legislative and Apportionment, as to Sections 1 and 25 be referred to the Rules Committee for suggestion.

FIRST VICE PRESIDENT: Mr. Barr.

BARR: Mr. Chairman, would you be agreeable to amending that to include other committees also? I see that the Legislative Committee has done two-thirds of the work of the Finance Committee. The language is practically the same.

HELLENTHAL: If I knew the sections I would be happy to consent to the amendment, but I would suggest that each committee in turn make a similar amendment if this meets with the approval of the group.

MARSTON: I second the motion.

DOOGAN: May I have it read?

FIRST VICE PRESIDENT: Please read the proposed amendment.

CHIEF CLERK: "The matter of conflict between the legislative and apportionment articles as to Sections 1 and 25 be referred to the Rules Committee for suggestion."

FIRST VICE PRESIDENT: All those in favor will signify by saying "aye", contrary "no". The "ayes" have it, carried. You wish to go ahead with the other sections, other than the two involved in this motion?

DOOGAN: May I ask the Chairman of the Legislative Committee a question? It is purely for information, and I don't object to it. I notice that you say in Section 8, "when the legislature shall convene," but it does not say they will meet for 60 days, 90 days, or a specified period of time. Did you have a definite reason for that?

McCUTCHEON: It was the preponderant thinking of our Committee that our legislature should not be limited as to time. It should be a continuing affair and that as the needs of the state required, the legislature could be brought into existence, it could be brought in by its own method of convening. The governor can call it, and they have also a stipulated date to begin each year for a session, and that is one of the reasons why we endeavor to devise a device in payment which would make the payment cover a year's service at a time so the legislature could be brought into session or out of session from time to time to take care of the needs. That is why we did not establish a limiting date except on special session. If the need arose of special session the legislature could maintain themselves in session, or the governor could maintain themselves in session, and if the governor did maintain the legislature in session, the legislature could only consider those items which the governor wanted on the agenda.

FIRST VICE PRESIDENT: The Chair would like to call the result of this motion to the attention of this Committee. I think, Mr. McCutcheon, in this case to meet with the committees at your convenience to make this correction, as the motion implied. Mr. Riley.

RILEY: Mr. Chairman, this then might be a proper time to announce a meeting of the Rules Committee during the dinner hour recess.

NERLAND: Mr. President, may I ask Mr. Hellenthal a question, or rather, Mr. McCutcheon? Mr. McCutcheon, as these various sections come up that are taken up in other proposals, is it your intention that these be discussed and amended finally on the floor, or do you intend that reference be made that this is taken care of in some other proposal and that the matter just be dropped until we come to that proposal?

McCUTCHEON: It may be that possibly I and one or two other members of the committee were laboring under the delusion that the Style and Drafting Committee had the right to reshuffle these various paragraphs in the articles to fit properly into

place in the constitution, and where there was conflict if there was not substantive conflict to drop one from one article and insert one from another article or vice versa. It appears from some of the times I have spoken here to some of the members of Style and Drafting that that may not be the case. If it is not the case, then we must either submit on the legislative branch, then I would suggest we might as well throw the legislative branch to the tail-end of the pile and take it up last and let everybody else get down to their business and then whatever is left, the legislative branch will utilize.

NERLAND: Mr. McCutcheon, would it be your opinion that if somebody moved to strike one of these sections, supposedly because it was mentioned elsewhere, would that preclude discussion of that section in another proposal?

McCUTCHEON: Not as far as we are concerned, I don't see how it could. The thing is that if you were moving to strike a whole section out of our article, it would appear to me that an identical section or a similar section in the article that you propose to have this paragraph stand in, I think it should be read so that the body could see whether or not they prefer it in one place or in the other. The Legislative Committee wishes to be as compliant as possible with the wishes of this body, and we don't want to deter anything or hold back anything.

NERLAND: I assume that. Don't you think it would be desirable to have it understood now how these matters are going to be taken up? Are they going to be amended finally and leave it to Style and Drafting to take it out of this section and put in another proposal at the proper time?

McCUTCHEON: It is a matter of authority of the Style and Drafting if they feel they can do that, I am perfectly willing to have such an action take place.

NERLAND: My point is that unless we do determine pretty definitely how it will be handled, why one might be handled in one manner and one might be in another.

McCUTCHEON: Absolutely. I think it is properly a matter of question before the body right at this moment as to what authority Style and Drafting will have in that respect.

FIRST VICE PRESIDENT: Mr. White.

WHHITE: It appears to me that you can't possibly properly discuss this section out of context. The body feels a certain section belongs in a certain article, it would be foolish for us to discuss it when it appears in another article. Mr. Nerland has

raised a very good point. If you move to strike an article, somebody could raise the question when you come to the second article, it is a matter of a two-thirds vote. You may not agree with me. I might not agree with myself. I think it is a good point to raise. I think both matters are a subject for the Rules Committee and I suggest we defer any discussion about sections in question.

McCUTCHEON: In answer to Mr. White, I don't believe we could properly say it would require a two-thirds vote on the second article which was not at that time under consideration if we struck one from the article under consideration because it never properly came before consideration on the subsequent article that was under consideration.

FIRST VICE PRESIDENT: The Chair will hold the same view on that. Mr. Riley.

RILEY: I will endorse that view just for myself, but it occurs to me that in the exchange between Mr. Nerland and Mr. McCutcheon, a number of points arose which parallel the ones assigned to Rules, and if it is the wish of the body that the Rules Committee come forward with a suggestion covering all of those situations, and there will be many of them which arise, it would be preferable to address ourselves to the full problem rather than to simply legislative and apportionment. There is sufficient overlap, as a matter of fact, on Rules and Style and Drafting that I think we could perhaps approach the thing from all standpoints and come up with a suggestion this evening.

FIRST VICE PRESIDENT: Mr. Riley, do you suggest to take care of that now or later on?

RILEY: I would ask unanimous consent that the directive just given the Rules Committee extend beyond the question of apportionment and the legislative branch, that it cover the general proposition before us.

FIRST VICE PRESIDENT: Is there any objection to that? Mr. Doogan.

DOOGAN: In view of that, I believe that there is quite a little discussion that has got to go on in the Rules Committee, and we can't rightly discuss and even begin to discuss this legislative article now and it is 5:10, so I would move and ask unanimous consent that we adjourn until 7 o'clock so that the Rules Committee can settle this.

COOPER: I object on the basis that --

DOOGAN: I so move.

1558

HURLEY: Point of order. The motion is not debatable.

UNIDENTIFIED DELEGATE: Question.

FIRST VICE PRESIDENT: You have heard the motion.

METCALF: Roll call.

ROSSWOG: I would like to ask to return to committee announcements if this motion carries.

V. FISCHER: Point of order. I think the motion to adjourn is out of order. Mr. Doogan rose and asked unanimous consent and sat down. Mr. Cooper was recognized by the Chair and while he was speaking, without being recognized, the motion was made and seconded. It seems to me that properly Mr. Cooper has the floor.

FIRST VICE PRESIDENT: I want to state my position here. We have been making our motions that "I move and ask unanimous consent", which I always felt was improper. I just assumed that was the type of motion Mr. Doogan made, but I do think your point of order is well taken, so the Chair will reverse his recognition of this motion and recognize Mr. Cooper. There is no motion before the floor.

COOPER: The thing that I want to point out is that Apportionment and Legislative have both decided on identical figures. I think it is entirely in order to take Section 1 and now discuss it and any of the delegates submit any amendments if they so desire, but I do believe it is in order to go ahead and discuss Section 1 and go on with the business.

FIRST VICE PRESIDENT: If there is no further discussion, we will proceed with this proposal section by section. Mr. Doogan.

DOOGAN: Mr. Chairman, I will move that we stand at recess until 7 o'clock.

FIRST VICE PRESIDENT: Is there a second to that?

BARR: I second it.

ROSSWOG: Can we now revert to committee announcements?

FIRST VICE PRESIDENT: Yes, Mr. Rosswog.

ROSSWOG: Local Government Committee will meet after recess in one of the committee rooms on the upper floor.

SUNDBORG: The Committee on Style and Drafting will meet briefly immediately on recess which I hope will be about 5:40 p.m.

FIRST VICE PRESIDENT: Are there any other announcements?

METCALF: Roll call.

FIRST VICE PRESIDENT: The Chief Clerk will call the roll.

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

Yeas: 8 - Barr, Doogan, Harris, Laws, Marston, Nolan, Riley, Sweeney.

Nays: 43 - Armstrong, Awes, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Emberg, H. Fischer, V. Fischer, Gray, Hellenenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nordale, Peratrovich, Reader, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Sundborg, Taylor, Walsh, White, Wien.

Absent: 4 - Poulsen, Stewart, VanderLeest, Mr. President.)

CHIEF CLERK: 8 yeas, 43 nays and 4 absent.

FIRST VICE PRESIDENT: So the motion failed to pass. Are there any amendments to Section 1? Mr. Robertson.

ROBERTSON: I rise to a point of order. I thought we just passed a motion here a few minutes ago referring Section 1 and 25 to the Rules Committee. It seems to me we would have to rescind our action.

SUNDBORG: Mr. President, my understanding of the motion was that we referred the general problems of conflict between this article and others to the Rules Committee. We did not refer to those sections.

FIRST VICE PRESIDENT: I think Mr. Robertson is right. As I understood the motion, Sections 1 and 25 were to be referred to the Rules Committee. Mr. Hinckel.

HINCKEL: There is no conflict between Section 1 and the section in the other article.

HELLENTHAL: May I be heard on this? I see Mr. Cooper's point precisely. Mr. Cooper is a member of both the Legislative and Apportionment Committees. He is the only member of the Apportionment Committee that is in that enviable position. Now it took the Apportionment Committee something like three weeks to

arrive at the conclusion that they presently have, that the senate should be composed of 20 members and their recommendation to the floor is that the senate be composed of 20 members. Now, during the Christmas holidays and in many discussions with gentlemen and ladies here in this group, I have received the impression that some people might want to increase that number, and some people might want to reduce that number. Now, I am prepared and I am sure other members of the Committee are prepared to take you step by step through the reasoning that led to the conclusion that the composition should be 20 members, but I think it would be better to do that perhaps at a later time, and that is why the matter was referred to the Committee on Legislation so that the entire apportionment could be considered as an integrated whole. If Mr. Cooper's suggestion is followed through, I think it will unduly prolong our discussions now and furthermore if a mistake is made after the careful consideration of the apportionment is made, and all the detail that go into it, it would take a two-thirds vote to rectify the mistake, to suspend the rules, and I think that is an undue burden to place on the body here. I personally am indifferent, but I don't see why. It is absolutely inconsistent with the creation of a separate Committee on Apportionment, and the inconsistency is more apparent with Section 25. There is a basic difference in approach between Section 25 and the recommendations that are made in the apportionment proposal. And I think we are going to waste a lot of time, and I'm doing it only to speed up our proceedings.

FIRST VICE PRESIDENT: Mr. Hellenthal, the Chair was correct in stating your motion that the first, Sections 1 and 25, the two sections to be referred to the Committee? We'll proceed with Section 2 then. Are there any amendments to Section 2 Mr. Rivers?

R. RIVERS: Mr. Hellenthal referred to taking us through a step by step statement as to how we arrived at these figures. We've got about 12 minutes to go before adjournment time, couldn't the Committee brief us a little bit before we start and utilize that for general information?

FIRST VICE PRESIDENT: Without any objections, the Chair will ask the Chairman.

KILCHER: Point of order, Mr. President, I would like to be corrected by Mr. Hellenthal if I am wrong, but I think Mr. Hellenthal had reference to this figure when its the Apportionment Committee's term, when the proposal by his Committee is up, the step-by-step explanation will come from Mr. Hellenthal.

FIRST VICE PRESIDENT: Mr. Kilcher, I think the question here is whether Section No. 1 and 25 is included in this motion that was made. Mr. Hellenthal, would you care to brief the delegates as Mr. Rivers suggested.

HELLENTHAL: I would love to, but frankly I do not think it can be done by any member of our Committee in the time allotted. I think that the presentation, it will all depend, well first, this is the pattern it will have to follow. An analysis will have to be made of the election districts that are suggested to the group. Following the analyses of the election districts, an analysis will have to be made of the house plan and of the method of equal proportions. Following that, a thorough analysis of this senate plan, which consists of two steps in the selection of senators, will have to be made. It is an integrated, dovetailed, whole, and if the body wants it now, it can very properly be given now, but I feel it is out of order now and frankly I would prefer to see it given when the apportionment is considered as a whole, and it does not tie Sections 1 and 25, do not tie in with any of the remaining 23 sections of the legislative group. I don't think it is necessary to know the exact numerical compositions of the bodies before intelligent decisions can be made on the other 23 sections. For example, in the senate we are in virtually substantial agreement on the number, just the precise number. I don't think it is going to vary more than three or four one way or the other, but I think it should be considered in logical sequence when it is presented and presented right from the election district right up the pyramid.

FIRST VICE PRESIDENT: Mr. Ralph Rivers.

R. RIVERS: In the light of those remarks, I think it would be well for us then to just suspend action on Section 1 and go on to Section 2. That carries out Mr. Robertson's idea. There is no relation and we could make some progress perhaps.

FIRST VICE PRESIDENT: Mr. Kilcher.

KILCHER: Mr. President, if I may so make a suggestion now while the thought is fresh in our minds as to the address to the Rules Committee, wouldn't it be possibly wise to consider conferring with the Chairman and ask the Chairman of the proposals that are coming up now to read all the other proposals and try to figure out what possible conflict there is and submit all of these possible conflicts to the Rules Committee and then that possibly the Rules Committee could except those sections from the general two-thirds rule. I see now that last year had come up, two months ago that question that we had in our Rules Committee. We lost a bit of time there. I am afraid the situation had no reason, but I for one was afraid it might happen. But possibly if a general reading of all the proposals was mandatory with the chairmen at least, and if a list of possible substantial conflicts were arrived at, the Rules Committee could then possibly decide upon which sections were in conflict and elevate all of those out of two-thirds rules. We would save a lot of time and future argument.

RILEY: I think the approach you suggest would probably be considered, Mr. Kilcher, at least as far as getting the committee chairmen together is concerned.

FIRST VICE PRESIDENT: Mrs. Sweeney.

SWEENEY: I would like to make a motion, but I would like to say a few words before that. I recognize that Mr. Gray has given the delegates a week's notice that the apportionment proposal was coming up. However, it might be that the delegates are ready to consider Proposal No. 14 at this time without this additional time, so I would like to move and ask unanimous consent that Committee Proposal No. 14 be taken up at this time rather than Committee Proposal No. 5. That is the apportionment proposal.

GRAY: I object.

SWEENEY: I so move.

HARRIS: I second the motion.

FIRST VICE PRESIDENT: It will take a two-thirds vote for that consideration.

UNIDENTIFIED DELEGATE: Roll call.

FIRST VICE PRESIDENT: The Chief Clerk will call the roll.

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

Yeas: 25 - Armstrong, Awes, Coghill, Collins, Emberg, H. Fischer, Harris, Hellenthal, Hinckel, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Reader, Sweeney, Taylor, Wien.

Nays: 25 - Barr, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, V. Fischer, Gray, Hermann, Hurley, Johnson, Kilcher, Nolan, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Sundborg, Walsh, White.

Absent: 5 - Hilscher, Poulsen, Stewart, VanderLeest, Mr. President.)

HINCKEL: Mr. President, I wish to change my vote from "no" to "yes".

HURLEY: Mr. President, I wish to change my vote from "yes" to "no".

CHIEF CLERK: 25 yeas and 25 nays and 5 absent.

FIRST VICE PRESIDENT: The motion has failed for the suspension of the rules. We will have Proposal No. 5 before us. Mr. Doogan.

DOOGNA: Mr. Chairman, I would like to move that the figures as spelled out in Section I conform as finally settled upon in the apportionment article.

HERMANN: Point of order, Mr. President. Did we not agree that we would not discuss Section 1?

FIRST VICE PRESIDENT: That is true. Section 2. We are holding No. 1 an d25 in abeyance. We start with Section 2. Mr. Harris.

HARRIS: Well, since we have wasted 15 minutes, and it has reached 5:30, I make the motion that we recess until 7:00 this evening.

DOOGAN: I second the motion.

FIRST VICE PRESIDENT: All those in favor of recessing until 7 o'clock this evening will signify by saying "aye", all opposed "no". The "ayes" have it. So ordered.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. The Chair wishes to call your attention to the fact that we don't have a stenotypist here and do you wish to continue with the recording here? There is supposed to be a man coming to replace the lady here and he hasn't shown up so far. What is the pleasure of the Convention? Mr. Johnson.

JOHNSON: I don't see how we can continue with the plenary session without a stenotypist because that is required by the Convention.

FIRST VICE PRESIDENT: Mr. Harris.

HARRIS: Mr. President, if I might make a suggestion, the stenotypist could take the notes from the tape machine.

HILSCHER: Mr. President, if we decide to go ahead, Mr. President, it would be well for you to in all cases give the name of the person who is on his feet so that they will not have to depend upon the voice to try to identify the person.

CHIEF CLERK: I keep a record of each person in the order that they speak.

FIRST VICE PRESIDENT: Mr. Hurley.

HURLEY: Put my name down. I move and ask unanimous consent that we continue with the business before us.

FIRST VICE PRESIDENT: Do I hear any objection? If not, it is so ordered. I think the first thing in order is the report from the Rules Committee. Mr. Riley.

RILEY: Mr. President, the Rules Committee met during the recess and on the question presented, reports as follows: that Section 25 in the legislative article be stricken from the legislative article and that it be considered later with the apportionment article. That Section 1 of the legislative article now before us, the Committee recommends that that be considered now for the reason that the apportionment formula if adopted will apply against whatever number of senators and representatives are provided in the legislative article. There is further reason that once these numbers are fixed in the legislative article, there will be time still for apportionment to consider that if change is indicated. As to other matters referred to the Rules Committee, the Committee on Rules asks that all chairmen of all committees call to Rules attention particular conflict concerning their articles, and that they do that prior to those articles coming up, that they note such conflict. In that event, Rules can then recommend to the Convention the assignment of that conflicting subject matter as between committees and as between articles. I ask unanimous consent that the Committee report be adopted.

MARSTON: I object.

RILEY: I so move.

DOOGAN: I second the motion.

FIRST VICE PRESIDENT: It has been moved and seconded that the Committee report be adopted. Is there any discussion? Mr. Marston?

MARSTON: May I ask the Delegate a question? Do I get it clear here that you're going to work on this first part of the program here on the size of the house?

RILEY: That is the Committee recommendation, yes, that the body consider that now.

MARSTON: It is very unfortunate that the whole program of apportionment and reapportionment has concrete definite reason why there should be a senate of 20 and house of 40 and it isn't in here. It isn't necessary that you do things here that will absolutely upset the apportionment rules.

RILEY: It is a coincidence that the two articles are almost in agreement. One states 20, the other states 20.

MARSTON: If you'll keep that there, I'll go along with you, but

--

RILEY: I won't guarantee a thing.

MARSTON: I wish you would, I'd be very happy.

FIRST VICE PRESIDENT: I think the motion before us is to adopt or reject the committee report and I think we should confine the discussion. Is there further discussion on the motion? Mr. Londborg.

LONDBORG: Did Mr. Riley mention that if we adopt the legislative report as it is, just in as much as it happens to be the same as the Apportionment and the Apportionment should come up with something different, we could go back and change this, is that right?

RILEY: No, that was not my suggestion. I believe you misunderstood me. The Committee recommends that Section 1 be considered now and that numbers be fixed in Section 1 as to the composition of the house and the senate, with the view that apportionment is a matter of devising a formula, which formula will apply against whatever numbers are adopted for senate and house. Now as we know, the articles happen to coincide or are nearly in agreement. One says "not less than" and the other says "shall be". Now we feel that in the case of which came first and the logical order here, in our judgment, is the legislative article because the matter of devising a formula can be worked against whatever number the Convention adopts.

LONDBORG: I can see a possible conflict even with that because in our consideration of a formula, we may wish to come up with a different number and with that in mind, I think we are giving up our right then to change the 20 and 40, unless by a two-thirds vote.

FIRST VICE PRESIDENT: I wish to call a two-minute recess. The stenotypist is here and it will give him an opportunity to set up his machine.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. We are ready to proceed. We now have a stenotypist with us. Now, Mr. Londborg, if you want to continue with your statement, you may do so.

LONDBORG: Well, I'd just like to say this, that there are apportionment plans, I believe, that leave a limitation as far as the number that are flexible. And if we adopt something like that, then we are stuck with a 24/40 plan, if that is adopted in the Legislature, and it couldn't be changed except by a two-thirds vote.

FIRST VICE PRESIDENT: Mr. Riley.

RILEY: Mr. President, in this respect I feel full confidence that if we ever found ourselves in an unworkable situation that was conspicuous or obvious, that two-thirds would never be a problem.

FIRST VICE PRESIDENT: Mr. Kilcher.

KILCHER: Mr. President, I will be in favor of this general motion if the Chairman of the Rules Committee could assure me for the record that when the discussion of districting comes up in apportionment proposal, all references to this Section I will be ruled out of order. I'll tell you the intent of that. If it seems advisable for consideration of districting which is a matter in itself, to come up with 19 or 21 senators, I wouldn't like to hear them say, "Well, bud, you're stuck with a two-thirds vote." I would like to see a substantial conflict permitted to develop, and then when we have a substantial conflict it will be possible to get a two-thirds majority, otherwise, I wouldn't want to have that thrown in my face, because I can plainly see where conflicts will come up. It looks too much like trying to tie something down with two birds with one rock, but to me it looks much more like driving a square peg in a round hole.

FIRST VICE PRESIDENT: Mr. Riley.

RILEY: Mr. Kilcher, as I have mentioned, it's like the question of the chicken and the egg, but in any event I can't guarantee that anything would be ruled one way or the other, not having the gavel, but I am confident, as stated, that in a given situation two-thirds will be no problem.

FIRST VICE PRESIDENT: Mr. Cooper.

COOPER: Mr. President, it was my understanding in the meeting with the Rules Committee that each and every committee proposal is treated in a like manner on this floor and that when the Apportionment Committee report hits this floor, it can, and undoubtedly will, be acceptable to amendments on a simple majority, is that not right?

RILEY: Yes.

COOPER: So there is no conflict whatsoever. There will be no two-thirds, three-fifths, or seven-eighths required to do anything to the Apportionment Committee, only the simple majority that is required at the present time.

FIRST VICE PRESIDENT: Mr. Londborg.

LONDBORG: Mr. President, in other words, if we come up with

something in Apportionment and we want to change the figure of 40, that can be done by pulling Legislative back and doing it on majority vote, is that right?

COOPER: As I understand it right now, the Apportionment Committee -- and this is the consensus in the Rules Committee -- that is that the Apportionment Committee, or any committee report yet to come on this floor can be amended by simple majority, they are all treated alike.

RILEY: I don't think these two gentlemen are both approaching the matter from the same end. Certainly, when Apportionment comes up in the future, every action taken on apportionment, until it gets out of second reading, will be taken by majority vote. But Mr. Londborg's problem is this: we have included second reading of the legislative articles. He fears that some change may occur, thanks to the action taken on apportionment, that there may be need for a change in the legislative article. In that event, what you heard discussed about a majority did not apply, but I think there, just on the basis of reasoning, that we would have more nearly a unanimous vote than a two-thirds.

FIRST VICE PRESIDENT: Mr. Fischer.

V. FISCHER: Mr. President, I would like to point out something else. In proposal No. 14 it says that, "The house shall be composed of 40 members and the senate shall be composed of 20 members." If we adopt a 20/40 figure for the legislative article, if when apportionment comes up and we decide that those figures are wrong and we want to change 40 to 35, we can change it to 35 in that article; and then, if the majority so desires, then, of course, we have a conflict between two articles that will have to be resolved, but then the two articles will be on an equal footing, one will say "35" and one will say "40". Then it's just a matter of working it out without necessarily resorting to --

HELLENTHAL: Mr. President.

FIRST VICE PRESIDENT: Don't interrupt the speaker, please.

HELLENTHAL: I'm sorry.

V. FISCHER: -- without necessarily having to resort to a two-thirds majority vote.

FIRST VICE PRESIDENT: Mr. Hellenthal.

HELLENTHAL: Mr. President, I'll grant what you say is true, Mr. Fischer, but if one of the group decides that it should be,

say, 45 in the house rather than 35, then under your interpretation, could a simple majority alter the figure that is adopted now?

V. FISCHER: Well, if we adopt 40 now and then, when apportionment is in second reading, we up that to 45, I think the same will hold true -- one will be at 40 and one at 45, and then we will just have to get together and work it out.

HELLENTHAL: I don't quite agree with you. I think that the action fixes a ceiling on it. If we approve Section 1 of the legislative article, I think we set a ceiling on the numerical composition in the house and senate, and to change it beyond that ceiling would require a two-thirds vote. But I agree with Mr. Riley. I have a lot of faith in the body, and I shall abide by the decision of the Rules Committee.

FIRST VICE PRESIDENT: Mr. Kilcher.

SUNDBORG: Point of order, Mr. President. Mr. Kilcher has already been heard twice on this subject, and I think we should invoke the rule that says that no member shall be heard more than twice on any motion.

FIRST VICE PRESIDENT: I'll be glad to enforce that, but you folks deviate from your rules every other day and I'm trying to be fair about the thing. All right, Mr. Kilcher, you said your piece, you spoke twice. We'll adhere to this rule. Mr. White.

WHITE: Mr. President, now I'm getting confused. If I understood Mr. Riley and Mr. Fischer correctly, they are directly contrary in their statements. I'd like to hear from Mr. Riley.

FIRST VICE PRESIDENT: You're directing a question to someone -- Mr. Fischer or somebody?

WHITE: Well, I'd like to direct a question to Mr. Riley.

FIRST VICE PRESIDENT: Mr. Riley, do you care to answer that?

RILEY: It's a difficult question. I'd say in many matters we are in accord. Mr. Fischer suggests that if that impasse results, that would be up to the body to reconcile the situation. I think he said they would get together. I may be mistaken on this, but I don't think he launched into this two-thirds proposition very fully.

WHITE: If I understand it correctly, that when we come to apportionment, if we wind up in variance with what we adopted in this legislative article, it is merely a matter of ironing it out with a majority vote.

RILEY: Ironing it out with a two-thirds vote in the legislative article. Apportionment will be a majority proposition all the way through second reading as all others, but if legislative meanwhile had been disposed of and gone into third reading, or gone to Style and Drafting, it will take a two-thirds vote to get it back to the floor for amendment.

FIRST VICE PRESIDENT: Mrs. Nordale.

NORDALE: I think it's a little ridiculous to assume that we couldn't get a two-thirds majority to prevent our coming out with a constitution that said one thing in one section and an entirely different thing in another section. I think we'd probably get a unanimous vote to get them together.

FIRST VICE PRESIDENT: Mr. Sundborg.

SUNDBORG: Mr. President, I believe we have in our rules another procedure for resolving these conflicts if such a conflict as has been supposed here should arise, and that is that the Style and Drafting Committee is directed to work out those conflicts and to make, if they can't work it out, to make a recommendation to the floor on how it should be resolved. So I think if we should come out and adopt 40 as a number here and 45 in another article, obviously, there is a conflict here which Style and Drafting has to resolve. Style and Drafting would then make a report to the Convention, which would either be adopted or rejected by a majority vote, not by a two-thirds vote, and if adopted, that would be the number. If it is rejected it goes back to Style and Drafting again and they come out with another number until finally they get one that is adopted, and that language is written right into the appropriate article and it doesn't take a two-thirds vote to do so.

FIRST VICE PRESIDENT: The Chair is of the opinion that the interpretation of the rule by Mr. Sundborg is absolutely correct. Any further discussion on this motion?

LEE: Do we have a question before the house?

FIRST VICE PRESIDENT: Did you wish to speak Mr. Lee?

LEE: No sir, I wanted to know if we had the question of the adoption of the report before us.

FIRST VICE PRESIDENT: That is what we are discussing now.

LEE: I would like to call for the question.

WHITE: May I ask a question?

FIRST VICE PRESIDENT: This is your first time?

1570

WHITE: Second.

FIRST VICE PRESIDENT: Just ask your question.

WHITE: In adoption of this report, Mr. Riley, are we assuming that you have recommended that we make no disposition of other sections of this article? Do we just leave it for the future?

RILEY: I might in reply state some background known to Mr. White and myself and the Rules Committee, that the Finance Committee did call to our attention other conflicts or other sections which were covered in other articles. Perhaps not in case of conflict, but the recommendations made by the Rules Committee covered Section 25 and Section 1 specifically of the legislative article and included in our report was a general recommendation that the other committees follow the practice already adopted by the Finance Committee. We asked that those conflicts be called to our attention early in order that we could recommend back to the Convention assignment of that subject matter to a particular article and to a particular committee, with the thought that the same treatment would be given it that is here recommended for Section 25, that it be stricken from this article and considered in the next.

WHITE: When we come to the article in question, then we so recommend?

RILEY: Well, we will try to set up a schedule where we may know before coming to that article if all the committee chairmen respond it will expedite the whole process.

FIRST VICE PRESIDENT: All those in favor of adopting this committee report signify by saying "aye". Contrary by saying "no". It is unanimous. The motion is carried and so ordered. Now you have Section 1 before you as to the figures, am I correct on that? Do I hear any amendments to Section 1? Not hearing any, we will proceed to Section 2. Mr. Barr.

BARR: I wasn't aware of everything that was going on, but since we are now allowed to amend this, I would like to move to amend on line 3.

FIRST VICE PRESIDENT: Which section?

BARR: Section 1. Line 3. Change the figure 20 to 16. I move its adoption.

FIRST VICE PRESIDENT: Do I hear any second?

NOLAN: I second the motion.

FIRST VICE PRESIDENT: Any discussion on the question? Mr. Hellenthal.

HELLENTHAL: Yes, I'm prepared to give the report of the Apportionment Committee at this time.

FIRST VICE PRESIDENT: I wish you'd confine it to this motion before us. Could you wait until we're through with that, or does it have a bearing on this?

HELLENTHAL: It has a direct bearing on this motion, and I reluctantly do so because I feel that this should be considered in its proper place. It's going to take about an hour and 15 minutes, Mr. President, and then when I'm through with this there may be other members, I know there will be, who will want to be heard on this.

RILEY: I raise a point of order, Mr. President.

FIRST VICE PRESIDENT: State your point of order.

RILEY: I heard Mr. Hellenenthal's reply the last time it was suggested, and this might be out of order, but the Apportionment Committee's report will normally accompany the apportionment article consideration, which is set on the calendar for sometime in the future, and I don't think that in view of the action just taken, that we need hear the Apportionment Committee's report at this moment.

FIRST VICE PRESIDENT: Mr. Riley, the Chair inquired of that, and he states that his talk will be directly on this motion, so I think that would be in order.

COGHILL: Mr. Chairman.

HELLENTHAL: I yield to Mr. Coghill.

FIRST VICE PRESIDENT: Mr. Coghill.

COGHILL: With the consent of Mr. Hellenenthal, I'd like to have a one-minute recess for the purpose of a conference.

HELLENTHAL: I will gladly consent.

FIRST VICE PRESIDENT: Granted. The Convention will recess for one minute.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. Mr. Barr, Mr. Hellenenthal has the floor.

HELLENTHAL: I'll yield to Mr. Barr.

FIRST VICE PRESIDENT: Mr. Barr, you may have the floor.

BARR: As I stated, my reason for making this motion, for changing the figures to 16 has nothing to do with apportionment, and I'm only worried about the mechanics of the legislature, the operation of the legislature and the difficulty of operating with 20 members. Now I'm willing to take this up some other time if I know no other amendments are going in or if this Section 1 was not going to be considered until later when we take it up in apportionment. I'm willing to delay it, but I wouldn't want it to go through this way and not be able to change it later. Is anybody else going to make any amendments on it, or leave it over until we consider the apportionment report?

HELLENTHAL: Mr. President, I would certainly agree with Mr. Barr that it may be delayed and considered once fully after we have all the facts.

FIRST VICE PRESIDENT: Mr. Hellenthal, I think you should confine your statements to the motion. If you wish to delay this motion, you know how to do it, and you folks know what it is.

BARR: I'm uncertain in my mind about what anybody else will do or whether I'll have an opportunity later to submit this amendment.

FIRST VICE PRESIDENT: I don't think you should try to get the delegates to commit themselves.

BARR: I don't believe I'll be able to.

FIRST VICE PRESIDENT: Mr. Victor Rivers.

V. RIVERS: If 16 goes through, I'll move for 21. If that fails, I'll move for 22, and if that fails, I'll move for 24 members of the senate. I'm willing to accept 20 though.

FIRST VICE PRESIDENT: Mr. Barr, do you wish to yield? You have the floor.

BARR: I know now what Mr. Victor Rivers will do if this goes through. I'm worried about what will happen if I withdraw my motion, if there will be like amendments or any amendment.

FIRST VICE PRESIDENT: Mr. Ralph Rivers.

R. RIVERS: My point is that I would be unable to vote on this motion until I have heard from Apportionment. We are absolutely shooting in the dark unless we know all the facts, as Mr. Hellenthal said. I would be willing to say that if they suspended Section 25 of this thing to be filled in later after we have heard from Apportionment that we should give Section 1

exactly the same treatment. We should also leave Section 1 open by common consent so that anybody can propose any numbers that he wishes to propose at that time. In other words, that no one would be foreclosed by suspending Section 1 at this time. And then we could go ahead with the rest of this article, but we can't sit here and shoot in the dark on these numbers before we have heard from Apportionment. So I move and ask unanimous consent that Section 1 be suspended from consideration at this time, and that no one be foreclosed when it is considered in connection with apportionment.

FIRST VICE PRESIDENT: Mr. Rivers, the Chair feels that we have a motion before us here. You can table the question before us or postpone it to a set time, if you care to.

R. RIVERS: I regret my overlooking that he had made a motion.

BARR: Mr. Chairman, with the consent of my second, I will now withdraw my motion and I assume that Mr. Rivers will make the motion he was speaking of.

HELLENTHAL: I yield to Mr. Rivers.

FIRST VICE PRESIDENT: Mr. Rivers has the floor.

HELLENTHAL: I think I still have the floor, I may have lost it, but I don't think so.

FIRST VICE PRESIDENT: The Chair will hold that Mr. Hellenthal still has the floor, although he did yield here.

V. FISCHER: Mr. President, point of order.

FIRST VICE PRESIDENT: Mr. Fischer, state your point of order.

V. FISCHER: It seems to me that there is nothing in the rules which authorizes this kind of yielding. If a motion is made, for instance, now by Mr. Rivers, unless Mr. Hellenthal yields to me, I couldn't even second. Unless Mr. Hellenthal yields to me, I can't get up and object to it and speak against it. I think it's perfectly improper.

HELLENTHAL: I'll abandon my position.

FIRST VICE PRESIDENT: Mr. Rivers, you may proceed.

R. RIVERS: Well, in that case I wish to advance the same motion that I just made, that Section 1 be suspended along with Section 25 for consideration later and until we have heard from Apportionment and had our full consideration of apportionment, and that by so suspending, no one be foreclosed from moving for any particular number in the legislature at that time.

HERMANN: Point of order, Mr. President.

FIRST VICE PRESIDENT: State your point of order, Mrs. Hermann.

HERMANN: We have just passed a motion to consider Section 1 to accept the report of the Rules Committee, which was to consider Section 1 at this time.

FIRST VICE PRESIDENT: However, Mrs. Hermann, if I may interrupt, he can move to postpone to a set time or else table it.

HERMANN: That isn't what he moved. I think he'd have to move to rescind our action of accepting that report.

FIRST VICE PRESIDENT: Not necessarily. He is trying to postpone consideration of this particular question within that section to a set time, and it's perfectly in order, according to the Chair's ruling.

HERMANN: I believe Mr. Rivers has asked for a suspension.

FIRST VICE PRESIDENT: It isn't the way I understood it. He is asking for a postponement of consideration of this question to such time as we get a report from Apportionment Committee, if I am correct in that, Mr. Rivers?

R. RIVERS: Yes, indeed, but whether it took a two-thirds vote or not, I did not stop to consider, Mr. President, but we have now run into a snag, and after we had accepted the report of the Rules Committee, we run into a snag, I think there is nothing to stop us from going ahead and taking some other action. So I submit my motion.

FIRST VICE PRESIDENT: Do I hear any second to that motion?

BARR: I'll second it.

FIRST VICE PRESIDENT: Seconded by Mr. Barr. It is open for discussion. Mr. McCutcheon.

McCUTCHEON: Mr. President, I don't see why there is such a furor here. If the members who were so concerned about their future rights will read the thing, they will find out that these are only maximum numbers.

FIRST VICE PRESIDENT: Any further discussion? Mr. Johnson.

JOHNSON: Mr. President, it occurs to me that we have been working on four proposals in the past two weeks, and the custom has always been to go through each proposal section by section and get all the amendments that anyone has to offer at the time,

and then to go back over the same proposal section by section, and ask for any other amendments, and if there are any further amendments, through the section. So it doesn't strike me that this motion is particularly out of order, because, as I say, we have been doing that very thing all the time. Until the proposal is submitted to the Committee on Engrossment and Enrollment, it's been before us in second reading, subject to amendment, period. And the amendments have been offered from one section to another, or in any order that they have come up, and we have always entertained them. There has never been any question about that.

FIRST VICE PRESIDENT: Mr. Johnson, the Chair feels that inasmuch as this particular question has been covered in two committees' reports, it is to the advantage of the Convention to see if there is a way out to combine the two after we hear the Apportionment Committee report. I think that's what Mr. Rivers had in mind.

JOHNSON: I wasn't objecting to Mr. Rivers' motion, I was simply pointing out that what he proposes is what we have been doing.

FIRST VICE PRESIDENT: Mr. Taylor.

TAYLOR: Mr. President, I can see no reason why we cannot go ahead with this at this time. The bill on apportionment states that there shall be 40 members of the house and 20 members of the senate. This proposed article says that the house shall consist of not more than 40 and 20 in the senate. It sets a maximum, so it could, no matter what happens, coincide with what Apportionment says. And another thing, we've got to look ahead and to the fact that there is a possibility that we might have to sacrifice some of our geographical area of Alaska to a nebulous theory that the northern part of it shall be used for defensive purposes, and so we may be deprived of two or three senatorial or representative districts. So I believe that the only safe method that we could pursue at this time is to consider number one, which sets a maximum, and it might be anything between half of what sets out there and up to the maximum limitation set here. It's a sliding scale, and in case we lost some of our geography of Alaska, this would still apply, and it would apply to the apportionment because the apportionment is based upon a population and geography. So you can't say that you have to wait on the apportionment bill to consider this, because this will work just as well with apportionment as the figures that they have got in apportionment, because you couldn't take those figures in the apportionment article because it might be wrong, because you might not have that many districts or you might not have the population you think you got, if the United States retains that northern part of Alaska and cuts out a good share of the geographical limitations so that it won't be

in the Territory. So we should adopt this and forget about the number that's in the apportionment.

FIRST VICE PRESIDENT: Any further discussion? Mr. Nerland.

NERLAND: Point of information, Mr. President. Couldn't this whole matter be pretty conveniently resolved by a rewording of this first section according to something like this: "The legislative power and authority of the state is vested in the legislature which shall consist of a senate and a house, membership in which shall be provided in Section So and So of the apportionment section." That way, we can take it up properly at the time when we come to it, instead of trying to argue about it now and reconcile the two proposals later.

FIRST VICE PRESIDENT: The motion before us, however, is to postpone consideration here. Mr. Fischer.

V. FISCHER: I would like to ask Mr. McCutcheon a question. Mr. McCutcheon, was your figure for the senate of not more than 20 and the figure for the house of not more than 40 based upon a convenient apportionment scheme, or was it based upon what the Committee considered to be a proper size for the respective legislative bodies for the State of Alaska?

MCCUTCHEON: Mr. President, I think I can say without deviating from the general sense of our Committee's thinking that the majority of the Committee felt that the legislature should be somewhat larger than it is, but did not feel that we should fall in the error of a number of the states which have run their legislatures up to two or three hundred people, and it was because of that thinking that we decided that something larger than our current membership, and we seized upon this figure because one of the members of the Legislative Branch was on Apportionment, and a number of the members of the Legislative Branch had observed the hearings and discussion what had gone on in the Apportionment Committee. It appeared that the Apportionment Committee had developed a theory of apportionment which fitted this type of figuring. So without getting into apportionment in the Legislative Branch to establish the figures, we set up these which it appeared would come out of the other Committee. Now there may be a conflict between the two inasmuch as the Legislative Branch has set a limitation, whereas I'm not sure that the Apportionment group intended to limit it.

FIRST VICE PRESIDENT: Mr. Fischer.

V. FISCHER: Well, Mr. President, I'm opposed to Mr. Rivers' motion because it seems to me that apparently the Legislative Branch Committee had a basis for establishing these figures. It seems to me that the purpose of the Apportionment Committee is to set up districts and apportion on the basis of what we

want to be the sizes of the houses of the legislature in the state. And it seems to me that the apportionment is a secondary matter, whether we have 50 members, as we may decide now, or whether we have 30 members in the house. We may have to revise the districts. I know the Apportionment Committee has worked hard, and they have come up with a certain apportionment scheme, but still the most important thing is to have the kind of legislature which we want for the state with the proper size. It may be necessary to revise the apportionment, the districting. but it seems to me that this is a proper place to decide on the membership of the house and the senate, and it seems to me that Mr. Barr's motion was perfectly in order and properly should be considered at this time, and I'm opposed to Mr. Rivers' motion, Mr. President.

FIRST VICE PRESIDENT: Mr. Cooper.

COOPER: Mr. President, I have heard several times that the members of the delegation, the delegates here want to hear from the Apportionment Committee. I am a member of that Committee, and I can say that you have heard from them. The Apportionment Committee set a figure of 20 for the senate and a figure of 40 in the house. It is identical to what is in Section 1, which is now before you. I think that is hearing from the Apportionment Committee. Seven men sat and decided and worked and figured out the apportionment for Alaska and arrived at a figure of 20 for the senate and 40 for the house. This Constitutional Convention has heard from the Apportionment Committee in so far as the number of legislators are concerned, and I think that Section 1 should go ahead and go across the floor and be considered.

FIRST VICE PRESIDENT: Mr. Buckalew.

BUCKALEW: Looking at this Section 1, it seems to be sufficiently elastic. I don't know what all the discussion is about, but I'm in favor of proceeding with the Constitutional Convention, and I move the previous question.

R. RIVERS: Generally the mover has the close. Do you want to cut me out of that?

BUCKALEW: I'd like to, but I'll yield. (Laughter)

FIRST VICE PRESIDENT: The Convention will come to order. Mr. Hurley.

HURLEY: Point of order. The mover did not have the closing --

FIRST VICE PRESIDENT: The Chair will have to rule that the previous question has been ordered.

R. RIVERS: The previous question is though that there has been debate on this question and the motion is that we suspend this until later. Now I have never had a chance to close. Buck, do you still want to make the previous question?

BUCKALEW: I do, Delegate Rivers.

HERMANN: Mr. President, that will not prevent him from talking after the previous question has been ordered. He can then have his say.

FIRST VICE PRESIDENT: The Chair is in a position where he has to enforce these motions as they occur. Should you wish to extend the privilege of closing the argument to Mr. Rivers, then it is entirely up to the maker of the motion to withdraw, or perhaps someone to extend him that consideration. Mr. McLaughlin?

McLAUGHLIN: May I request unanimous consent to have a minute's recess?

FIRST VICE PRESIDENT: The Convention will recess for one minute.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order.

R. RIVERS: I ask unanimous consent that my motion may be withdrawn. Let the tail go with the hide.

FIRST VICE PRESIDENT: What motion was that?

R. RIVERS: My motion was that we suspend with Section 1.

FIRST VICE PRESIDENT: In other words, it nullifies the previous question. I see. And you're right back on Section 1, is that right?

R. RIVERS: Was unanimous consent granted?

FIRST VICE PRESIDENT: Yes, I didn't hear any objection. What is the pleasure of the Convention with regard to Section 1? Mr. McLaughlin.

McLAUGHLIN: Mr. President, I request that the Secretary read that.

FIRST VICE PRESIDENT: Will the Secretary read the amendment.

CHIEF CLERK: "Section 1, page 1, line 3: strike the words 'of not more than 20 members', and on line 4, strike 'of not more than 40 members'." So that Section 1 reads: "The legislative power and authority of the State is vested in the legislature, which consists of a senate and a house of representatives."

McLAUGHLIN: I so move.

WHITE: I'll second the motion.

BUCKALEW: Objection.

FIRST VICE PRESIDENT: It is open for discussion then. Mr. McLaughlin.

McLAUGHLIN: Mr. Chairman, I have no particular interest on either side of the question, except to get the show on the road, and one method of getting the show on the road is merely to drop out the numerals that seem to be bothering everyone. They are referred to specifically in the article on apportionment and it might be a bad start, but gentlemen, we can pick it up. It is one of the few things we can, in Style and Drafting and insert it back in where it belongs, properly in terms of form, but what we are arguing about now is merely a question of form.

FIRST VICE PRESIDENT: Mr. Buckalew.

BUCKALEW: Mr. President, it seems to me that we are arguing about a question of substance. He's changed it from 20 to 40 to just creating a legislature composing of a senate and a house. Now I think this amendment is one of the most illogical amendments that has been offered to date. The legislative article is going to have to determine the size of the senate and the size of the house -- the limits on it, anyway -- and I think we ought to vote on Section 1, and that's the way to get the show on the road.

FIRST VICE PRESIDENT: Mr. Davis.

DAVIS: Mr. President, I'd like to ask Mr. McLaughlin a question.

FIRST VICE PRESIDENT: You may.

DAVIS: Was it your intention, Mr. McLaughlin, that we vote on this section as you have proposed the amendment, and then at the time the apportionment section is considered we'll set the number and then Style and Drafting, or somebody else, can take the number which is set and put it back in this section?

McLAUGHLIN: Yes, Mr. Davis, and it doesn't require a two-thirds vote under any circumstances.

FIRST VICE PRESIDENT: Mr. White.

WHITE: I believe, contrary to Mr. Buckalew, that this is the most logical proposal that has been made all day. There may be some people here who feel that the figures in this paragraph have no relation whatsoever to apportionment, but it is also obvious that

there are other people who feel these figures are inextricably bound up to the part that Apportionment has done. So long as that is the case, somebody here is going to demand that we hear the entire apportionment story before we set any figures. I would agree with Mr. McLaughlin or anyone else who feels that the final resulting figures belong in this article and I think Mr. McLaughlin has found a perfect way out for now.

FIRST VICE PRESIDENT: Mr. Coghill.

COGHILL: Mr. President, I believe that this amendment will serve the purpose very well. The hour is getting late, and this being our first evening session, I feel that we should accomplish something, at least get through the first section on this proposal. So, therefore, I move the previous question.

FIRST VICE PRESIDENT: Do I hear any second to that?

R. RIVERS: I second the motion.

FIRST VICE PRESIDENT: The motion is that the previous question be ordered. All those in favor of the motion signify by saying "aye". All those contrary? The "ayes" have it. So what is the motion now? Will the Chief Clerk please read it.

CHIEF CLERK: "To strike the words on line 3 'of not more than 20 members' and on line 4, strike 'of not more than 40 members'."

FIRST VICE PRESIDENT: All those in favor of this motion signify by saying "aye".

UNIDENTIFIED DELEGATE: Roll call, Mr. President.

FIRST VICE PRESIDENT: Roll call, Secretary, please.

JOHNSON: Point of order, Mr. President.

FIRST VICE PRESIDENT: State your point of order, Mr. Johnson.

JOHNSON: Did you not announce the results?

FIRST VICE PRESIDENT: No, I didn't.

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

Yeas: 38 - Armstrong, Awes, Barr, Boswell, Coghill, Cross, Davis, Emberg, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, Knight, Laws, Londborg, McLaughlin, McNealy, Marston, Metcalf, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, Rosswog, Smith, Stewart, Sweeney, Walsh, White, Wien.

1581

Nays: 11 - Buckalew, Cooper, Doogan, V. Fischer, Lee, McCutcheon, McNees, Peratrovich, V. Rivers, Sundborg, Taylor.

Absent: 6 - Collins, H. Fischer, King, Robertson, VanderLeest, Mr. President.)

CHIEF CLERK: 38 ayes and 11 nays, and 6 absent.

FIRST VICE PRESIDENT: The motion is carried. Any further amendments in Section 1? If not, we'll proceed with Section 2.

CHIEF CLERK: I don't have any amendments to Section 2.

FIRST VICE PRESIDENT: Proceed to Section 3. Any amendments to Section 3?

CHIEF CLERK: No.

FIRST VICE PRESIDENT: Any amendments to Section 4?

CHIEF CLERK: No amendments to Section 4.

FIRST VICE PRESIDENT: Any amendments to Section 5? Mr. Fischer.

V. FISCHER: I don't have an amendment, but I'd like to ask the Chairman a question, if I may.

FIRST VICE PRESIDENT: You may, Mr. Fischer.

V. FISCHER: Mr. McCutcheon, in the second sentence of Section 5 in line 13, is it your intention to preclude a legislator running for governor or United States senator or United States representative without resigning from the legislature?

MCCUTCHEON: The intention of this section was to place a prohibition upon anyone holding office transporting themselves around the new state campaigning at public expense. We sought to shut off any public funds from being utilized for political purposes, as has been done in the past. If they wish to run for an office other than this one, that is, given the two exemptions that exist here, then they shall resign from their office.

V. FISCHER: I'd like to ask a further question. It says, "No legislator or other elective or appointive officer" In other words, you're dealing here also with the governor in the legislative article?

MCCUTCHEON: With the governor and any of his appointees.

V. FISCHER: One more question. Is it your intent on line 15 where it says "until his services have been terminated" - does

that mean when his term expires?

McCUTCHEON: The intent is that he shall resign if he files for a different office.

V. FISCHER: If it was just a matter of whether resignation is a termination of his services, is that what you had in mind?

McCUTCHEON: Well, however you apply it. It shuts his pay off, that's it, period.

FIRST VICE PRESIDENT: Mr. Coghill.

COGHILL: Mr. President, I'd like to ask Mr. McCutcheon a question on the same line. On that same sentence that you were just discussing, would that preclude a board member from serving on a board, would he have to be asked to resign from the board?

McCUTCHEON: Yes, if he draws any salary from the State of Alaska.

COGHILL: It doesn't state so. He would just have to resign, whether he was just on a per diem and travel, such as our board members are today.

FIRST VICE PRESIDENT: Mr. Taylor.

TAYLOR: Mr. McCutcheon, I believe Mr. Fischer asked you a question as to whether a person would have to resign if he was running for the Senate of the United States or the House of Representatives in Washington, D.C. Did your Committee take into consideration that they are not state officers, that they could run. If they are paid by the United States they would not come under the provisions of this chapter or section.

McCUTCHEON: You mean a member of the national Congress is not a state officer except in the sense that he is representing but his remuneration does not come from the state, it comes from the national Congress.

TAYLOR: The members of the legislature of Alaska could run for senator or representative of Congress without resigning his position, if there be no prohibition.

McCUTCHEON: I'm not sure, and I hope the Committee will clarify the situation, if I have overlooked it. I'm not sure that our Committee discussed that particular point. Do you recall, Mr. McNeese?

McNEESE: No, we did not in Committee.

McCUTCHEON: Do you recall, Mrs. Sweeney?

SWEENEY: No, we did not concern with that phase of it.

McCUTCHEON: I think our intention was to eliminate the possibility of any state official of any nature whatsoever traveling at public expense for the purpose of campaigning, and that was our idea and our intent that he couldn't hold one job and run against another official of the state office. If we haven't quite accomplished that --

FIRST VICE PRESIDENT: Any further questions? Mr. Riley.

RILEY: Would a two-minute recess be in order to resolve that at this time, and I ask unanimous consent.

FIRST VICE PRESIDENT: So ordered, and the Convention is at recess for two minutes.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. Before we proceed with our business, I'd like to ask the delegates to please state your names when you arise to speak. We have a new man operating here and he's not acquainted with you ladies and gentlemen. You have Section 5 before you. Mr. Sundborg.

SUNDBORG: I have an amendment for Section 5, it's on the Clerk's desk.

FIRST VICE PRESIDENT: Would the Secretary read the amendment to Section 5.

CHIEF CLERK: "Section 5, line 15: after the word 'office' insert the words 'or the Congress of the United States'."

FIRST VICE PRESIDENT: What is your pleasure, Mr. Sundborg?

SUNDBORG: I move for the adoption of the amendment.

TAYLOR: I'll second the motion, and ask unanimous consent for its adoption.

FIRST VICE PRESIDENT: Any objection? Hearing no objection, the adoption of the amendment to Section 5 is so ordered. Mr. Harris.

HARRIS: I have an amendment on the Clerk's desk.

CHIEF CLERK: "Section 5, line 13: delete 'or other elective or appointive officer of this state'."

HARRIS: I move its adoption.

FIRST VICE PRESIDENT: Hear any second to that?

BARR: Mr. President, I'll second it.

HARRIS: I'd like to state my reason for this amendment. I can see the time in the future where we might have some people serving on an elective or appointive office in a dollar-a-year capacity. Now those people, I don't think, should be prohibited from running for office if they so desire, and since this is a legislative article, I think we should try to confine it to the legislative branch and not to any and all branches.

FIRST VICE PRESIDENT: Any further discussion? Mr. Rivers.

R. RIVERS: Mr. President, as Mr. McCutcheon said, the objection is that people who are in the public service may not develop business all over the Territory just prior to the election and travel on Territorial expense and per diem. Well, a dollar-a-year man is only a dollar-a-year man so far as his salary is concerned. He, as a dollar-a-year man, can still get his transportation and per diem all over for campaigning purposes. So to carry out the intention of the Committee and actually ban all campaigning at state expense, we should turn down this motion of Mr. Harris.

FIRST VICE PRESIDENT: Mr. Barr.

BARR: Mr. President, my chief objection to this language that Mr. Harris is trying to delete, is that it has no place in the legislative article, it deals with the members of the executive branch of the government, and we have an Executive Committee report. I do believe they should not use public money for that reason, but I don't go quite as strong. I believe there should be a few that should campaign. I don't think that the governor should campaign to become a senator in Washington if he wants to.

FIRST VICE PRESIDENT: Any further discussion? Mr. Harris.

HARRIS: Mr. President, I don't want to take up too much time on this because we've got other things to do here, but as Mr. Barr says, in the executive section in the committee report that we do have a clause covering that for appointees of the governor, and if we are going to throw these clauses indiscriminately into every article, we are going to come up with a quite confusing document, I'm afraid. So, therefore, the main reason for suggesting it in the first place was to confine the legislative article to the legislative branch and let the other branches take care of themselves as they so choose, so that if there is a conflict, if there is a man that we think should run, we won't have him prohibited from it by making a blanket statement such as we have here.

1585

FIRST VICE PRESIDENT: Ready for the question?

TAYLOR: Question.

FIRST VICE PRESIDENT: All those in favor of adopting this motion, signify by saying "aye". Read the motion, Secretary.

CHIEF CLERK: "Section 5, line 13: delete 'or other elective or appointive officers of this state'."

FIRST VICE PRESIDENT: All those in favor of this motion signify by saying "aye". To the contrary, say "no". I think the motion is lost. The Chair rules the motion is lost. Mr. Victor Rivers.

V. RIVERS: I would like to ask a question of the Chairman of the Legislative Committee. If I understand it, the way we have amended it, if the governor wanted to run for senator or for the house of representatives of Congress, he would then file, and immediately, or prior to the time of his filing on the first of February, he would have to resign the governorship; and then, as we have the executive set up at this time, the secretary of state would become acting governor, and he would then have to resign in order to file to become governor.

FIRST VICE PRESIDENT: Mr. Rivers, are you speaking on a motion?

V. RIVERS: No, I'm asking a question. I'm just going to ask the Chairman of the Legislative Committee what becomes of all our successive state offices here, they all must resign for the office ahead of them when they start to file.

FIRST VICE PRESIDENT: Can you answer that, Mr. McCutcheon?

McNEES: I can answer that. If he wants to run for office, let him resign.

FIRST VICE PRESIDENT: Mr. Johnson.

JOHNSON: I have an amendment to Section 5.

FIRST VICE PRESIDENT: Will the Secretary read the amendment.

CHIEF CLERK: "Section 5, page 2, line 14: after the word 'state', add the words, 'except members of boards'."

FIRST VICE PRESIDENT: Mr. Johnson.

JOHNSON: Mr. President, I move the adoption of the amendment.

FIRST VICE PRESIDENT: Do I hear any second?

HARRIS: I second it.

FIRST VICE PRESIDENT: Mr. Harris seconded the motion. Is there any discussion on it? Mrs. Nordale?

NORDALE: May I ask a question of Mr. Johnson?

FIRST VICE PRESIDENT: You may.

NORDALE: Is a board member considered an officer of the state?

JOHNSON: Well, I would think so, he's a civil officer if he occupies a board created by the legislature.

NORDALE: Even though he doesn't draw a salary?

JOHNSON: That is correct, I don't think that makes any difference.

FIRST VICE PRESIDENT: Will the Secretary read the amendment?

CHIEF CLERK: "Section 5, line 14: after the word 'state', add the words 'except members of boards'."

FIRST VICE PRESIDENT: All those in favor of adopting this amendment signify by saying "aye". Contrary? The "ayes" have it, and it is so ordered. Any further amendments? Mr. Coghill.

COGHILL: Mr. President, I'm concerned with what Mr. Victor Rivers just brought up, and I'd like to direct a question, if I may, to the Chairman, Mr. McCutcheon, as to the extent of the governor. You know as well as I do that any governor or senator will use every opportune time to get up and speak or to further his political career, if that is his aspiration, and in going around to dedicate school buildings, or what not, why he'll become a prominent public figure in that community, and, in turn, is promoting his own political or general welfare. Now are you in this requiring a governor to resign his office and the lieutenant-governor take over, if he wishes to become a state senator, or file for the state senate?

MCCUTCHEON: Would that be an unacceptable procedure? The line of automatic succession as set up in the executive articles would take care of the office. It seems to me that a governor is going about the state on business of the state, no matter what he was doing, if he were dedicating things, as you say, he may do so, until the date he files for election, or files for office at national level, then it seems to me that comes within the intent of this Committee, and that he should get off the payroll.

V. RIVERS: I'm not asking a frivolous question when I say that at the same time the governor resigns to run for Congress, why then the secretary of state must resign to run for governor.

McCUTCHEON: He does not have to resign to run for governor, if I understand your automatic succession sets up a vacancy.

V. RIVERS: He would be the automatic successor as the acting governor, but he'd have to run for re-election from the secretary of state's position.

FIRST VICE PRESIDENT: We have no motions before us. Any amendments?

NORDALE: May I ask Mr. McCutcheon a question, Mr. President?

FIRST VICE PRESIDENT: You may.

NORDALE: This says, "To run for election to any other state office"; that would mean that anyone could run for re-election?

McCUTCHEON: Right.

FIRST VICE PRESIDENT: Hearing no amendments, we'll proceed with Section 6 Mrs. Sweeney.

SWEENEY: I don't have an amendment, but I would like to ask concerning line 24, between the words "except" and "felony" whether the word "treason" should be in there, Mr. McCutcheon? In our first draft we did have "treason" in there, and I was wondering whether this is just a slip that it is not there now?

FIRST VICE PRESIDENT: Care to answer that, Mr. McCutcheon?

McCUTCHEON: As I recall, as a matter of fact, we did have "treason" in the original article, and it seems to me that our consultant said that it would be unlikely that a treasonable act would occur insofar as our state was concerned.

R. RIVERS: Well, treason is a felony, too.

SWEENEY: Well, I just wanted to be sure that we are all right in leaving it out, and, as I say, we did have it, and your constitution carries it.

McCUTCHEON: It appears that several of the attorneys state that treason is a felony, so it would be covered under a felony.

HERMANN: I'm wondering if it was intended to omit "immunity" from service of a subpoena?

FIRST VICE PRESIDENT: Maybe some other members of the Committee should help Mr. McCutcheon out.

TAYLOR: I'd like to ask Mr. McCutcheon a question. Ordinarily the privilege of being served a civil process extends to members

of the legislature, but I see that the Committee has left it out of here. I was wondering whether that was done deliberately or whether it was an oversight? In other words to protect the members of the legislature so that they wouldn't be summarily taken away from the legislature to answer civil processes in the courts.

FIRST VICE PRESIDENT: I don't think Mrs. Hermann had an answer yet to her question.

HERMANN: It was the same thing.

McCUTCHEON: If I'm not incorrect -- and I'll stand corrected by any member of our Committee -- it was the intention of our Committee that while in session the legislators should be protected from the service of any type which would impede or impair their attending a session of the legislature, excepting in the event that they do create a felony or create a breach of the peace, so that our intent was that -- I think we are probably more concerned about being subjected to a libel suit, if they made some statement, and it is possible that we inadvertently overlooked the service of civil process which would interfere with their attending a legislature.

FIRST VICE PRESIDENT: Are you through with the answer to the question, Mr. McCutcheon?

McCUTCHEON: Yes sir.

FIRST VICE PRESIDENT: Mr. Buckalew.

BUCKALEW: I move for a three-minute recess to give the Committee an opportunity to draw an amendment to cover civil process for subpoena.

FIRST VICE PRESIDENT: Without objection, it is so ordered. The Convention will recess for three minutes.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. The Secretary will read the amendment by Mr. McCutcheon.

CHIEF CLERK: "Line 25, page 2: after the word 'arrest', insert 'and immune from service of civil process'."

BUCKALEW: I move its adoption.

FIRST VICE PRESIDENT: Do I hear any second to it?

McCUTCHEON: I ask unanimous consent for the adoption of the amendment.

R. RIVERS: I object.

McCUTCHEON: I so move.

BUCKALEW: I will second it.

R. RIVERS: I object just for the time being. The grounds for my objection is that you are not immune from service of process, you're immune from the compulsion to leave the body to go some place. Now if I'm in the legislature, someone can serve a summons upon me any time during the session. I can engage counsel in my home town to file a motion or an answer to stall the thing off. I think what it was intended here that no subpoena or other order of the court shall be compulsory while you're in attendance. Now I want to get at the same intention that Mr. McCutcheon is aiming at here, but I think we ought to pause just a moment before we act on this, because you're not immune from the service of a process. If somebody serves something on you, you're not under the compulsion, you don't have to respond and you're not in contempt of court. I just wanted to get this wording right.

BUCKALEW: Could I ask Mr. Rivers a question?

FIRST VICE PRESIDENT: You may.

BUCKALEW: Don't you think, for example, that the legislator that was served with a civil suit and I don't think he should be allowed to be served with a civil suit until after the legislator was over?

R. RIVERS: Well, he's got 20 days in which to answer. Any lawyer could file a motion to tide him over. Being served with a summons doesn't take a man away from the session. Perhaps we had better look and see what our legislative immunity says in our present statutes. I haven't had a chance to look at it here. But I am quite sure that normally services of various papers can be made, but you're not compelled to leave the body. That's the point.

HELLENTHAL: The book here refers to it as "immunity from civil process" in two places, on page 17 of this chapter on the legislative department.

R. RIVERS: That's from the PAS?

HELLENTHAL: Yes, sir.

R. RIVERS: That's probably just a reference to the subject matter though, without trying to guide us on the right phraseology.

HELLENTHAL: Why don't we pass this for a few minutes, go on to the next section while you and I check?

R. RIVERS: All right.

FIRST VICE PRESIDENT: We have a motion for its adoption on that. Do you wish to delay action on it and revert back to it? Mr. McCutcheon.

McCUTCHEON: I ask unanimous consent to defer further action of this until we conclude the correct wording of the proposed amendment. I ask unanimous consent.

FIRST VICE PRESIDENT: Do I hear any objection? So ordered. We are still on Section 6, however. While they are making their corrections, does anybody have any other amendments in a different part of this section? I hesitate to go to other sections before they are through.

CHIEF CLERK: I have an amendment to Section 7.

FIRST VICE PRESIDENT: We'll proceed with Section 7, and in case I forget, someone remind me to revert back to 6. Read the amendment to the section.

CHIEF CLERK: Mr. Boswell: "Strike the first two lines from Section 7 and the word 'governor' in the third line and insert in lieu thereof, 'each member of the legislature shall receive for their services and per diem, a sum not to exceed one three hundred-sixtieth of the annual salary of the governor for each day's attendance while the legislature is in session.' Strike the comma after 'salary' in line 8. Insert a period, and strike the remainder of lines 8, 9, and 10."

BOSWELL: I so move.

COGHILL: I will second it.

FIRST VICE PRESIDENT: Mr. Armstrong.

ARMSTRONG: I wonder if we could have Mr. McCutcheon give us the thinking of the Committee on the need for an annual salary as it is opposed to this amendment? If one would strike out the intent of the Committee, let's hear from the Committee.

FIRST VICE PRESIDENT: I think this question was directed to Mr. McCutcheon.

McCUTCHEON: The thinking of the Committee with respect to an annual salary, whether or not you agree with this particular formula is the fact that on an annual basis you will not have the

jam-up of legislation at the end of the session. It will be a continuing affair. The legislature can be activated or deactivated any time, either by themselves or by the governor. If there is a press of business, they can be summoned into session on short notice for a short period of time. Their salary is a continuing affair which doesn't require that they shall have to get up against a log jam in order to adjourn on a limiting date. Now the main theory behind an annual salary proposition is that if an annual salary is established, the legislators will conclude with as much dispatch as the public interest will permit the business of the legislature. They'll be happy to get back home. If it's put on a daily remuneration basis, then necessarily there must be a limit to the time that is established, that the legislature may sit, and by putting it in such a fashion we have then the same frailties of our legislative setup that we have in the Territory at this time. There are quite a number of the states that pay their legislators on a yearly basis. Consequently, while I may be partly in accord with the theory of the motion that is offered by Mr. Boswell, I personally in this respect believe that he is defeating the intent of our Committee by revising the salary proposition, because he takes out the comment of annual salary, which then makes the legislature on a limited basis and it will require substantial amendment in order to create the time limit as they should be set for the legislature.

BOSWELL: Mr. Chairman, I agree with the Committee's viewpoint, that it is not wise to put a dollar amount in the Constitution, and also I think it was a good idea to tie it to the governor's salary. I do not agree with their methods. In the first place, it would give us a questionable distinction of having the highest paid legislature in the 49 states. New York is now the highest with an annual salary of \$5,000. If we assume a salary for the governor of \$20,000, it would mean then that our legislators would be getting \$6,667. Also, I might point out that New York's tax receipts are in excess of one billion dollars, and it would seem to me that with our tax receipts such as they are, that putting our legislators' salaries up above New York would seem a little out of place. The Committee said in their commentary that this sum would result in career legislators. I don't believe it's enough money to induce anyone to make a career out of being a legislator. And, as a matter of fact, I'm not sure that having career legislators would be a good thing either. I think we'd better have a little fresh blood in there once in awhile, a new viewpoint. If we assume a salary of \$20,000 for the governor, this would amount to about \$55.50 per day. Extending that to a month and it would be \$1400. I think that would induce a fairly high type of person to run for the legislature. And if the legislature is in session for four and one-half months, it would then equal the amount that the Committee has set for it; it would equal one-third of the governor's salary. Of course, if it went on to

a six-month session, it would equal half his salary, approximately. It may be necessary for the legislature to sit for a long time for the first year or so, but I would expect that the time will come when it might only require a month or two. And if it does reach the time, say they should have a good Legislative Council which they have set up, that they only have to go there for a month, then on this committee proposal they would be working at an annual salary of \$8,000 a year, having gotten a third of the governor's salary for one month's work. And I'm merely seeking to establish a yardstick here that will pay the legislators on the basis of services performed, and if it takes four or five months for a while, that's fine, but the time may come when I think it would be a lot more applicable figure.

FIRST VICE PRESIDENT: Mr. Fischer.

V. FISCHER: Mr. President, I believe that the Committee's plan of an annual salary is highly desirable. If we go through with the amendment we would have to change Section "A" by adding a limit upon the session, because I do not believe that with a daily pay you would want to leave the length of a session completely open. I think that rather than approve the amendment, we should decrease the annual salary below the one-third of the governor's salary, and I have an amendment to offer in that line, if this is defeated.

FIRST VICE PRESIDENT: Mr. McNeese.

MCNEESE: Mr. President, in line with Mr. Boswell's remarks, I'd also like to remind the assembly here that New York also has 56 senators and 150 representatives.

FIRST VICE PRESIDENT: Mr. Rosswog.

ROSSWOG: Mr. President, if I might direct a question at some member of the Committee. I know in their thinking of this proposal that they must have considered the cost of such a three month session of the legislature each year. Just in rough figures I can see where at \$5,000 a year salary it would run to \$300,000 for salaries, and usually it costs that much again for other expenses, which be around \$600,000 per year. At present we have a session every two years, and I believe that it is considered for a yearly session, or longer.

FIRST VICE PRESIDENT: Any further discussion? Mr. Armstrong.

ARMSTRONG: Mr. President, I'd like to hear from some folks who have served in the legislature as to their feelings about this, because it seems to me it means a person forfeiting their time and business for a year or two years. There is not only the service to the state, but the retention of their own business and their own security and their home.

And before I could vote on this, I would want to see it from the standpoint of someone who has served in the legislature. What is your feeling about it, and are you in favor of an annual type of setup as we have it proposed here in the original section, which would be altered by Mr. Boswell's amendment? Could I direct it, say, to Mr. Barr over here? He's had to sit down in Juneau. What is your reaction to it, Mr. Barr?

BARR: Mr. President, I do favor the annual salary for reasons stated by Mr. McCutcheon. The legislature should be called any time for special sessions, and so forth, and that would not vary the sum expended, it would be constant year after year. And another reason is that I don't believe that some of us here realize that a legislator, himself, does a little work at other times. He's always speaking to his constituents, or they are asking him for something, and he's writing to the departments of the government trying to get it for them. It may not be a great amount of time he spends, but he certainly would feel as if he were obliged to do those things for the people if he were receiving an annual salary, instead of being paid just while he was in Juneau. Now, also, I'm not for giving the members of the legislature a really large salary, but I believe it should be large enough so that it would attract the right kind of people, not just men who would run for the salary alone. Perhaps they are footloose and fancy free, and they can't lose anything by filing for the election. In Alaska we do have some pretty high salaries paid at the present time. My opinion is that with the present salary, a single man can go to Juneau and can come back without losing any money, he might have a few dollars left in his pocket. A married man who has to maintain a home, say in Fairbanks or Anchorage, and then goes down there and lives in a hotel might lose by it, and in addition, if he is running a business of his own, he will lose. Now we know that the average good attorney makes more money in a month's time than he will receive in Juneau, and, of course, if we have attorneys down there, we want good attorneys down there, and most of them can't afford to leave their business. I believe the salaries should be tied to the governor's salary and not in a dollar amount, but a percentage thereof. And we must consider, of course, the ability of the Territory to pay these salaries. If we have a very large legislature, it takes more money, and if the salary is very high, it takes more money. We should pay them sufficiently, and I'm not prepared to say what that figure is, but it should be sufficient.

FIRST VICE PRESIDENT: Mr. Hellenthal.

HELLENTHAL: Mr. Barr, what is the monthly salary of a legislator now?

BARR: It's \$15 a day and \$20 per diem. And actually, that \$20 is somewhat in lieu of pay, because we know that \$15 isn't very much pay.

HELLENTHAL: Would you say it was \$900 a month? Thirty-five times thirty?

BARR: Yes.

TAYLOR: Between that, less taxes.

HELLENTHAL: Well, I'm a lawyer, and I don't make \$2700 a month. I believe your remark was, though, that a lawyer made as much in one month as a legislator made throughout the session of the legislature.

BARR: If I did, I didn't mean to say that.

HELLENTHAL: That's the way I interpreted it, Mr. Barr.

BARR: No, I said that the average lawyer made more in a month's time than a legislator made in a month's time.

ARMSTRONG: Mr. President, the reason for my cross-examination on this is because of a fundamental belief that I have in the price that we are going to have to pay for statehood. I think as we move into statehood we must be secure in that fact, that the men we put into the office of the legislature will be assured that they can do the job and do it well, that we can call for the highest caliber of men throughout the Territory, and I'm talking about women, too, that's correct, Mrs. Hermann. But this feeling has been one that I have carried for many years. As people have talked about statehood, I have insisted that statehood would bring to Alaska the highest type of citizenry to work for us in our halls of the legislature, without reflection on any work that has been done before. And I think at the point of statehood we must produce the highest type of a legislation to show that we are able to hold our place in the sisterhood of states. So as I am trying to weigh this back and forth, my own feeling at this point is that we may have to pay more for the annual wage, but it would seem to me it would be a price worth paying, if we can hold ourselves up before the Union and say that we want the highest type of men and women to serve us in the legislature. So my feeling is to defeat the amendment and to retain some formula that would be set up in the original document.

FIRST VICE PRESIDENT: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I ask unanimous consent for two-or three-minutes' recess, please.

FIRST VICE PRESIDENT: Hearing no objection, it is so ordered, and the Convention is at recess for ten minutes.

RECESS

FIRST VICE PRESIDENT: The Convention will come to order. Mr. Armstrong.

ARMSTRONG: I've had the occasion of being brought into a corner and talked to in reference to the statements I made. Not that I was reprimanded, but should I say, enlightened. I'd like to ask Mr. Taylor if he would speak to the Convention from the standpoint of his discussion with me as to where there was a fallacy in my procedure, for he was talking about deadlines and the amount of time away from a person's business in a little different angle, and I wonder if he would explain to the Convention some of the fallacies that he felt were in my arguments.

TAYLOR: Well, after quite a number of times in the legislature, we find that the ordinary person aspiring to the legislature that thinks of the salary last, I believe, and in getting something done for the Territory, first. And it is a considerable burden upon a man with a business to have to go away for even a stated period like 60 days. Ordinarily, we know when we go down for 60 days that we'll be back and we can arrange our affairs in the office accordingly. Now with an indeterminate session such as we've got, it would be a grave doubt as to whether a man with a business could run for the office, because he wouldn't know whether he was going to be gone for 30 days or six months. And so as I say, the salary proposition is something we should not consider too much. As we realize, the salaries heretofore for the legislature have been paid by the Federal government, the per diem has been paid by the Territory. So if we come out with a bill, or with an article in the constitution that shows that it cost \$600,000 to hold the Territorial session or a state session of the legislature, and it would be reflected in our constitutional articles when it went before the people, they might be a little hesitant about buying that bill of goods that we are trying to sell them. They will think it was a little bit too high, so I think that we should lower our sights on this, considerably below what is put in the proposed article. It might tie the salary to the governor all right, but I don't believe that in proportion as set out here, of one-third, because it might be that some year you might get \$6,000 for a 30 days session, and that's quite a large salary, and another time you might get the same amount of money for a two-months session. Of course then again, you may have to get \$6,000 for a six months session. If you got that, you'd be getting about just what you get now on a per diem basis. So I think we should be careful, not only in regard to the finances of the Territory, but also the effect that it's going to have upon the voters when this document is submitted to them for ratification. Now I think that Rivers had another thought that he brought up with Mr. Armstrong that he might like to elaborate on.

FIRST VICE PRESIDENT: Mr. Fischer.

V. FISCHER: Could I first ask Mr. Taylor whether he is for or against the amendment, since we have an amendment before us.

FIRST VICE PRESIDENT: You may.

TAYLOR: I don't think I heard the amendment.

FIRST VICE PRESIDENT: Will the Secretary read the amendment, please.

CHIEF CLERK: "Strike the first two lines of Section 7 and the word 'governor' in the third line, and insert in lieu thereof, 'each member of the legislature shall receive for their services and per diem a sum not to exceed one 300/60ths of the annual salary of the governor for each day's attendance while the legislature is in session.' Strike the comma after 'salary' in line 8. Insert a period and strike the remainder of lines 8, 9, and 10."

TAYLOR: That would be tied in to the governor's salary, but on a per diem basis. That might be a good idea.

FIRST VICE PRESIDENT: Mr. Ralph Rivers.

R. RIVERS: I want to speak to the amendment. After having been down there one session as a member and also the attorney for forum sessions, including two extraordinaries, I have found that things lag at the outset, and as much as with this body, you don't seem to get very much done until you're facing a deadline. Your big production and your calling out of all your junk that gets thrown in all comes because of the fact that you are reaching a deadline and you have to get the job done in a certain time. So I don't like this indefinite, year-long call that you're on, or that you can string along with a job, especially with some people who never want to let go of a bone or a detail. You can't get the job done unless you have some definite periods of time is the way I feel about this, so I favor Mr. Boswell's amendment very much. I am very concerned about the amount of money that we would run into. We've got this big charge that the big doubt is whether Alaska can afford statehood. I think we have to trim the suit to fit the cloth. I don't see how we can come out paying \$300,000 a year for a legislative setup during the early years of our statehood when we are only paying about \$60,000 a session now. Maybe that's just \$15 without the \$20, but then you multiply that by two and make it \$120,000 a year for the legislature's activities, but this sounds like a deluxe deal, and I don't think we can afford it. So I go along with Mr. Taylor, that if many men who have businesses and professions were going to be asked to run on that sort of a nondeadline basis, which could string on for months, they might just as well give up the idea of running for

the legislature at all. As it is, many of your busiest men are your best men. They can spare 60 days, or 90 days at the outset and still plan accordingly, arrange their affairs and be in business, but if you cannot be in business and be on that kind of nondeadline continuous call, then you can't run for the legislature, so I think this system would eliminate more good, qualified, highpowered people than it would induce. I also think, as I said before, it would cost far too much. I think that the percentages as set forth by Mr. Boswell are very liberal. It would run \$55 a day on the basis of the governor getting about \$20,000 a year and you would simply be getting paid so much per day for the work you did. If we adopt Mr. Boswell's idea, I think we should stick in a provision that the legislature may extend its session for an additional month, emergencies or press of business requiring. But nevertheless, that would take a majority vote of the members of the legislature, you would still have a tentative deadline at the end of your 90 days, with a possibility of an additional 30 days. You would also have your extraordinary sessions as the basis for taking up any emergencies or unforeseen contingencies that might arise. I also concur that if you do give them a compensation based on a daily performance, then you have to fix a maximum period for your sessions, with a possibility of allowing them to extend for an additional 30 days or something like that. But I like that formula much better than this deluxe annual salary that cuts lots of good people out of really being able to run.

FIRST VICE PRESIDENT: Mr. Marston.

MARSTON: The time I was out, this vacation time, I learned one thing, I learned the fear of this gigantic price that we are paying for statehood on these salaries. I am all for it and I believe you can never pay a good man too much, but on this basis and the fear of the people that I talked to, it leads me to go right down the channel with Taylor and Rivers here on their thoughts and I think we should scale it down. I don't think we should do it tonight. It is now 9:30 and I move that we adjourn tonight at this time. Now tomorrow morning if someone could come up with a new formula, it will give us time to think it over. It is time to adjourn now and I move and ask unanimous consent that we adjourn for the evening, until 9 a.m. tomorrow.

JOHNSON: I second the motion.

UNIDENTIFIED DELEGATE: I object.

DOOGAN: Having voted on the prevailing side on the article on health, welfare, and education, I serve notice now of reconsideration for tomorrow on the motion to delete the last line of Section 1 of the article on education.

FIRST VICE PRESIDENT: Is that for a specific amendment?

DOOGAN: The last sentence.

FIRST VICE PRESIDENT: The motion before us is to stand adjourned. Mr. Riley.

RILEY: We have one announcement. During one of the recent recesses, the Rules Committee reconsidered the pending calendar, thinking that because we were now on the legislative articles and because there has been so much discussion of apportionment, that probably while all attention was directed to the two subjects jointly, the next matter on the calendar should be apportionment instead of the executive. I don't have my own calendar before me but the existing lineup was for the two executive articles, 10 and 12, following legislative and the Rules Committee felt that the body should have notice that it has made this change in the calendar whereby apportionment will be the next matter taken up after legislative, which will probably make it the day after tomorrow.

FIRST VICE PRESIDENT: Will the delegates make note of that, please, it's quite important.

McCUTCHEON: I'd like to make a committee announcement. The Legislative Branch will meet in the back of the room here at 8:30 tomorrow morning or as soon thereafter as any of the Committee can get here.

FIRST VICE PRESIDENT: The motion is that we adjourn until 9 o'clock tomorrow morning. All those in favor signify by saying "aye". The "ayes" have it and it is so ordered. The Convention is adjourned until 9 o'clock a.m.