

ALASKA CONSTITUTIONAL CONVENTION

January 24, 1956

SIXTY-THIRD DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning Reverend Gurr of the Pentecostal Church of God. Reverend Gurr will give our daily invocation.

REVEREND GURR: Gracious Heavenly Father, we come unto Thee this morning, thanking Thee for Thy goodness and Thy mercy to all mankind, praying unto Thee, O God, as Solomon prayed of old, that, mighty God, this morning Thou would grant unto this body of people, God, wisdom and understanding, God. God, be with them, Lord God, in each one of their meditations and decisions. Help them, O God, in each one of their decisions. Lead them, mighty God, that they might be able, God, to do something, Lord, that will edify Thee and to edify all mankind. God, we pray that Thou will guide them, Lord, in every act that they do. Be with them, Lord God, throughout this Convention. Help each one, O God, to be a brother to his neighbor. In Jesus' name we ask it. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: Four absent.

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

KNIGHT: Reporting for the journal's 56th day and not finding any errors or omissions, I ask unanimous consent that the reading be dispensed with and the journal be approved.

PRESIDENT EGAN: Mr. Knight asks unanimous consent that the journal of the 56th day be approved as read by the special Committee to read the journal. Is there objection? Hearing no objection, it is so ordered. Are there any communications or petitions from outside the Convention? Are there reports of standing committees? Select committees? Are there any motions or resolutions? If not we will proceed with our calendar. Mr. Riley?

RILEY: Mr. President, I might call attention to two matters on the calendar which the members might note. The calendar was in the boiler room last evening before Committee Proposal No. 14 had been ordered to the calendar -- that is the election district descriptions -- which might be entered now under second reading for consideration today. Also, Committee Proposal

No. 16, after this calendar was published, was put over for 24 hours, last evening, so it may be out of order as it appears here.

PRESIDENT EGAN: We have Committee Proposal No. 17 before us then at this time. Is that right? Initiative and referendum? Mr. Sundborg?

SUNDBORG: In order that we can get Committee Proposal No. 14 all together again so that it can be considered in its entirety in the Style and Drafting Committee, I would like to move and ask unanimous consent that we now consider in second reading the portion of Committee Proposal No. 14 that was reported to the Convention yesterday by the Committee on Apportionment; that is, the descriptions of election districts.

PRESIDENT EGAN: You have heard Mr. Sundborg's unanimous consent request; is there objection? Mr. Nolan?

NOLAN: There is one item in here that I would like to check on the map first, unless it comes back up again for second reading for change later on?

PRESIDENT EGAN: Would you care to hold that over?

SUNDBORG: I'll withdraw my request, Mr. President.

PRESIDENT EGAN: If not, then we will have the proposal relating to initiative, referendum, and recall at this time. Mr. Johnson?

JOHNSON: A point of inquiry. Did I understand you to say we were to begin on the initiative and referendum?

PRESIDENT EGAN: That is what the calendar shows, Mr. Johnson, at the top of the page. The Chair did not note that originally. What number is that on the enrolled copy?

CHIEF CLERK: It is headed "Style and Drafting Report".

PRESIDENT EGAN: The Chief Clerk may read the proposal. Mr. Sundborg.

SUNDBORG: I wonder if we may have our report read since it relates directly to the proposal.

(The Chief Clerk began to read the report.)

PRESIDENT EGAN: Do you wish to read the whole report?

CHIEF CLERK: Oh. Initiative and referendum, I'm sorry.

(The Chief Clerk then read the report of the Committee on

Style and Drafting concerning Committee Proposal No. 3, initiative, referendum and recall, in its entirety.)

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I believe the covering letter points out most of the changes which have been made since this article left the floor. I wonder if we may take it up section by section?

PRESIDENT EGAN: Yes, Mr. Sundborg.

SUNDBORG: And I would be willing to answer questions.

PRESIDENT EGAN: Section 1, are there questions relative to Section 1? Does any delegate have a question in relation to Section 1?

SUNDBORG: I might mention, Mr. President, that from the enrolled copy we have combined Sections 1 and 2 therein, into Section 1 of the Style and Drafting report.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Shall we put it this way? Is the referendum limited to only the acts of the legislature?

SUNDBORG: That is my understanding, Mr. McNees.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: I just wonder if it was necessary to combine those two. The language that was used by the Committee and approved on the floor here is the same language that is used in practically every constitution that uses the initiative and referendum. It is practically a standard definition and reads well and sounded good to practically everybody. The new language as used by the Committee on Style and Drafting, personally, doesn't appeal to me anywhere near as much. I just wonder if Style and Drafting isn't, for the sake of brevity, condensing our constitution to the point where it doesn't sound or look good.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Our thought on that and our decision was based on the fact that in the enrolled copy, Sections 1 and 2 both were concerned with a reservation of power by the people, or to the people, and we were able to reserve that power, covering both of these situations in a section which is shorter than even the referendum section alone as it appeared in the enrolled copy, and one of our desires throughout has been not to condense, necessarily but to express the ideas of the constitution succinctly and without unnecessary words in order that it won't

repeat itself and go on at great length. We have no strong feelings in this matter but this thing that we have done, combining Sections 1 and 2 of the enrolled copy into a single section here, which we think is clear and we couldn't possibly misconstrue it, is just typical of the sort of thing that Style and Drafting has been doing throughout the proposals which it has been working on.

PRESIDENT EGAN: Are there other questions?

SUNDBORG: There is no substantive change that has been made and we do feel that Section 1 in our redraft does read well.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, there is a substantive question here that is not a change by Style and Drafting that I think, specifically, Mr. McNees's previous question brings it into my mind, that we might have overlooked something. In the first place, namely, that the referendum can reject acts of the legislature only. How about rejecting a law that has been initiated two or three years before? Is it our intention that such a law shall not be subject to change by referendum at a later date?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. Kilcher, I believe it was the intention of the Convention, if we will look at what is Section 5 in our draft and what in the enrolled copy was line 14 on page 2; I will read from the enrolled copy. It says, "Referendum petitions shall be filed within 90 days after adjournment of the legislative session at which the measure was passed." Now, I think that ties us down definitely to make the referendum apply only to acts passed by the Legislature, and it also said in Section 2 of the original enrolled copy that, "The people reserve the power to require, by petition, that laws enacted by the Legislature be submitted to the voters for approval or rejection.

KILCHER: I realize that, Mr. Sundborg. I said that a substantive question that does not arise from your Committee's changes, but that generally, I think, whether it has been given enough thought in the first place. I would like to maybe ask the committee chairman of the substantive committee if that idea has been given sufficient thought. I, for one, do not know how technically a law enacted by initiative could be changed and by whom. By the legislature? If not -- if somebody has the answer I would be pleased to hear it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Although the question wasn't addressed to me, Mr. Collins, may I attempt to answer that?

COLLINS: You may, Mr. Sundborg.

SUNDBORG: I believe the remedy there, Mr. Kilcher, would be for a new initiative to be introduced. That is, something which has been put on the books by initiative could be repealed or changed in any respect by another initiative, which would simply change its language or saying that, "Section so-and-so of the laws are hereby repealed." That would go through the initiative process and be accepted and adopted by the people; that law would then go off the books.

KILCHER: In other words, you think it might be possible by another initiative to strike, delete, or amend any law?

SUNDBORG: I am certain of that Mr. Kilcher.

KILCHER: Thank you.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, I think Section 6 answers Mr. Kilcher's question on line 19. Beginning on line 19, "An initiated law is effective 90 days after certification, is not subject to veto, and may not be repealed by the legislature within two years of its effective date." And following is the part which I feel answers the question, "It may be amended at any time."

PRESIDENT EGAN: Mr. Johnson? Mr. Barr?

BARR: In Section No. 1, on the second line it says, "... and approve or reject acts of the legislature." Now, of course, that word "acts" means two things. It means an action or it may mean a law enacted that is called an act afterwards. Now I took this to mean a law "may approve or reject laws passed by the legislature". Was that the intention of the Committee? Suppose they did not pass a law? In other words, they took action against a bill, then could that be referred or initiative taken on it? It seems to me "action" would be better, which would include both passage or defeat of a bill.

SUNDBORG: I think it is probably clear from Section 5, where the detailed procedure is discussed, that it could apply only to laws. It says there, "Referendum petitions may be filed only within 90 days after adjournment of the legislative session at which the act was passed."

BARR: Now that is what concerns me, because if the legislature fails to pass a law that the people think is necessary, then they should have the power to initiate that law. That is not an act that is passed, that is an act that failed. It isn't an act; it is a bill that failed.

SUNDBORG: Mr. Barr, they do have the power to initiate such a law under the initiative. There is nothing that says they can't.

BARR: How about on the referendum? The legislature wouldn't, if it failed, naturally they wouldn't refer it to the people.

SUNDBORG: That is right. Then it would have to be initiated.

BARR: It would have to be initiated.

SUNDBORG: There was, as I remember it, a proposal, I think it was in the proposal on the legislative, where there was a provision for acts which had not been passed, or something of the kind, to be referred. Is that correct?

PRESIDENT EGAN: Mr. McNees?

MCNEES: I have that here, Mr. Sundborg. It is something I have been checking on. Section 21 in the original legislative article.

BARR: Well, that answers the question pretty well.

SUNDBORG: And it was deleted, was it not, by the Convention?

MCNEES: Not to my knowledge. That was the reason I was raising the question.

SUNDBORG: How does it read, Mr. McNees?

MCNEES: Section 21, "Any bill failing of passage by the legislature may be submitted to referendum by order of the governor either in its original form or with such amendments which were considered by the legislature, as he may designate. Any bill which, having passed the legislature, is returned thereto by the governor with objections and, upon reconsideration, is not approved by the majority as required by this constitution, may be submitted to referendum by a majority of all the members sitting as one body." Of course, that would lead to legislative action.

SUNDBORG: I believe that the whole thing was deleted by action of the Convention because it does not appear in the enrolled copy of the act on the legislature, Mr. McNees.

MCNEES: I know it does not appear in the enrolled copy.

PRESIDENT EGAN: Mrs. Sweeney, do you recall?

SWEENEY: I was just looking for it. I don't recall right offhand.

SUNDBORG: I know we have been working in our Committee on the proposal on the legislature and it does not contain it in the enrolled copy.

PRESIDENT EGAN: Mr. McCutcheon, do you know or do you recall what happened?

MCCUTCHEON: Yes, Mr. President. That particular section of our article was deleted by amendment on the floor.

BARR: The entire section?

MCCUTCHEON: The whole thing was struck.

PRESIDENT EGAN: Are there other questions with relation to Section 1? Are there questions on Section 2? Mr. Robertson?

ROBERTSON: In line 10, Style and Drafting has said, "Denial of certification is subject to judicial review." The enrolled copy in Section 4, line 16, it says that "certification shall be reviewable by the courts". Now it seems to me a "denial of certification" is different than "certification", and if it is, at least there ought to be an allowance or denial that certification is reviewable by the courts.

SUNDBORG: Mr. President, I wonder if Mr. Robertson is looking at the enrolled copy or is he looking at the report of the Committee before it was amended on the floor? My enrolled copy says on line 15, page 1, "Denial of certification shall be reviewable by the courts."

ROBERTSON: I beg your pardon -- I was looking at it.

SUNDBORG: I think we have preserved that same idea exactly in our draft.

PRESIDENT EGAN: Are there questions to Section 2? Mr. Gray?

GRAY: If I may refer back to Section 1 in that "reject act", is there any reason why you did not use the same words and say "reject laws"? You say the people "may propose and enact laws" and in the other "approve or reject laws". Is there any difference between "laws" and "acts"?

SUNDBORG: When Mr. Barr raised that question I did feel and I do now feel that there may be a difference. It might be better to say "and approve or reject laws enacted by the legislature by the referendum". Of course, a law is not enacted by the legislature; it is enacted by the legislature with the approval of the governor, and it can be vetoed by the governor. If the Convention feels it would clarify anything I am sure our Committee would not object to putting in "reject laws enacted by the legislature".

R. RIVERS: Mr. President, I have been through that mill. Bills or proposals in the legislature are called bills. After the legislature passes them they are called acts, and any of

the special actions are covered by resolutions or memorials or house joint resolutions or concurrent resolutions. This can only refer to a law. As Mr. Sundborg said, acts are also subject to approval of the governor; so to say "acts enacted by the legislature" then you should also stick in "and approved". I think this is perfectly good the way it is.

TAYLOR: Mr. President, "acts" is much broader than "laws". If you enact a law it is an affirmative act; it is an affirmative thing done by the legislature, but an act might be an action of the legislature which repealed some former law. That is still an act. There is a difference between a law and an act. It could be a repeal or putting a new law on the books, but if a law was the only thing that goes on the book, when you repeal something you haven't passed a law. You have passed a repeal. "Act" is much the better term.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I am sure the word "acts" meets Mr. Gray's objections but I wonder if thought was to the congressional method which was to capitalize the "A"?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I can answer that directly by saying that thought was given to capitalization, and the decision of our Committee, subject to review here, is that we will capitalize nothing in this constitution except "United States", "State" when used as a noun, and proper names. We are not going to capitalize "governor", "legislature", "senate", "house of representatives", and that is in line with the modern trend in constitution writing as well as elsewhere.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: You know the distinction we make to overcome Mr. Gray's objection; the Congress of the United States always, when referring to an act of Congress, capitalizes the "A".

SUNDBORG: If the Convention wants to do that in this case, I think our Committee wouldn't object. What is the thought here? That the word "acts" might be confused with "actions"?

PRESIDENT EGAN: Mr. Barr.

BARR: I don't believe the lawyers here confuse it but I believe that the layman might when he reads this constitution. There are a lot of people that don't even know that a bill that is passed is called an "act", and when they read this, they think that you are talking about an "action" of the legislature.

SUNDBORG: Relying on what Mr. Rivers and Mr. Taylor said, I

would feel that it was our intention here to make not only the actions of the legislature, the acts which had put new law on the books but also such actions as the legislature might take, say, repealing a law, subject to the referendum. For instance, the next legislature might go to work and repeal the entire law having to do with employment security. Well, if the people didn't like that and wanted to take that up as a referendum, I believe they should have the right to do so, even though what the legislature did might have been expressed in just half a dozen words, that "Chapter so-and-so of Session Laws such-and-such is hereby repealed."

PRESIDENT EGAN: Are there other questions in relation to Sections 1 or 2? If not, are there questions with relation to Section 3? The Convention will come to order. Mr. McCutcheon.

MCCUTCHEON: It would appear to me that there is some validity to this discussion. As far as an act of the legislature is concerned, an act of the legislature could be a concurrent resolution, a joint memorial, a memorial by either house, or some other type of act, which would not have the force or effect of law necessarily, and which would not be subject to either the governor's approval, or initiative by the people; and yet it appears to me that in this particular instance either they should go beyond the word "acts" because an act cannot become a law without either the overriding by a substantial majority in the houses or else the approval of the governor. At least that is the way it appears to me. So, it would appear from that argument that the word "acts" is not necessarily applicable in this instance, primarily because there are a number of actions which can be taken by the legislature which would not be subject to initiative, or referendum, as a matter of fact, because they may only apply to the legislature itself or be of a transitory nature which would not have the effect of law.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President and Mr. McCutcheon, those resolutions and memorials are labeled resolutions and memorials, and every bill is entitled "a bill" or "an act". So, I believe that the titles that are hooked on would answer Mr. McCutcheon. Those are actions to be sure, but they are not acts.

PRESIDENT EGAN: Are there questions with relation to the first three sections? If not, are there questions on Section 4? Mr. Sundborg.

SUNDBORG: Mr. President, there is a change which we have made in Section 4 which may be substantive. I will read the language first from the enrolled copy. It says, on lines 9 to 13: "The petition may be filed with the attorney general, who shall prepare a ballot title or proposition, designating and summarizing

the substance of the proposed law which proposition shall go upon the ballot as hereinafter provided. You note that the "attorney general" which we have changed to "secretary of state", he has the duty of preparing the ballot title, designating and summarizing the substance of the proposed law, but he does not have the duty under that language to put it upon the ballot and neither does anyone else. It simply says that it "shall go upon the ballot", and we have changed ours to fix that responsibility for seeing that the measure gets on the ballot on the secretary of state. We have said, "The secretary of state shall prepare a title and summary of the proposed law and shall place them on the ballot..." which we felt tightened it up and made him subject to mandamus if he failed or refused to do what we believe was the intention of the article as it passed the floor.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Sundborg, who prepared the proposition?

SUNDBORG: The original bill?

HELLENTHAL: The proposition that you vote on.

SUNDBORG: The secretary of state, that is, the proposition, Mr. Hellenthal.

HELLENTHAL: Where does it say that?

SUNDBORG: Well, what you vote on is what is on the ballot. It says, "The secretary of state shall prepare a title and summary of the proposed law and shall place them on the ballot." Now, that "proposed law", is that what you are asking about?

HELLENTHAL: Would you think that "title" or a "summary" is identical with "the proposition"?

SUNDBORG: That is just "a title and summary of the proposition". The proposition itself is handled here in Section 2 where it says, "The application must contain the bill to be initiated." It might be a bill or an act, Mr. Hellenthal, which might be pages and pages long such as the banking act which has been considered at several sessions of the legislature and has never made it though. Now, some group of bankers might wish to get that enacted by the initiative, and it runs to something like 200 pages. You couldn't possibly put that on the ballot, but it should be contained, word for word, of what the law would be in the initial application and then it would be the duty of the secretary of state to summarize that and give it a title and have on the ballot enough description of it so the people would know what they were voting on.

HELLENTHAL: Well who prepares the proposition?

SUNDBORG: The sponsors.

HELLENTHAL: I don't think it's clear there at all. I think the original language was far better.

SUNDBORG: Well, let's compare the two. The original language says --

HELLENTHAL: "... who shall prepare the ballot title or proposition." Now, frankly, I don't think that the two names are synonymous at all, but this language makes them, at least in light of the constitution, but I think the proposition should be referred to, and I think it should be clearly referred to in Section 4, or rather 5.

SUNDBORG: You are speaking of the new Section 5?

HELLENTHAL: Yes. The reason I say that is that the lawyers here that have worked on municipal bond issues know how difficult it is to prepare a workable proposition, and that is one of the greatest arts of the legal profession, and a lot of lawyers fall on their face in that connection, and I think this proposition should be clearly distinguished from the ballot title or from the summary. They are just different things, that is all.

SUNDBORG: As you used the word "proposition" is that the language that goes on the ballot?

HELLENTHAL: Yes. Proposition 1, proposition 2, proposition 3. They are usually questions, "Shall a law be passed authorizing the voters to bond for capital improvements necessary to construct a dock?" That is a proposition, and it is quite an art.

SUNDBORG: That is the same thought that we have here. Now if you will look at the enrolled copy it says, "The attorney general shall prepare a ballot title or proposition ..." which would seem to indicate that they are synonymous.

HELLENTHAL: They are not synonymous, though.

SUNDBORG: I mean he could put, under this language, either one, on the ballot.

HELLENTHAL: But in your new Section 5 you don't even use that language.

SUNDBORG: No, but don't you think we cover it when we say first, referring to Section 2, that "The application must contain the bill to be initiated or the act to be referred." That would have to be complete. Then in Section 3 we say that, "The secretary of state" -- wait a minute.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk may read the communications that are before the Convention.

(The Chief Clerk read the following communications: a telegram addressed to President Egan from Mirth B. Sarvela, Northern Fishing Vessel Owners' Association of Sitka, requesting fisheries management policy be set forth in the resources article of the constitution; a telegram addressed to Delegate Awes from Jean A. Blanchard of Anchorage, urging provisions be made in the constitution for fish and wildlife; a telegram addressed to Delegate White from Jess Morrison of Anchorage, criticizing the omission of the provisions for fish and game in the constitution; a telegram addressed to Delegate White from A. W. Lond, Secretary, Anchorage Sportsmen's Association, stating that only by incorporating the Alaska Sportsmen's Council recommendation into the constitution will the fish and wildlife be safe from mishandling; a telegram addressed to Delegate McCutcheon from Howard Houtz, Anchorage, criticizing the omission of provisions for the fish and wildlife in the constitution; a telegram addressed to President Egan from the members of the Anchorage Sportsmen's Association, criticizing the delegates for not specifically providing for the fish and wildlife in Alaska, in the constitution.)

PRESIDENT EGAN: The Convention will come to order. Are there other communications? If not we will proceed with the proposal on initiative, referendum and recall. Mr. Sundborg.

SUNDBORG: Mr. President, I would like to offer a committee amendment. "Section 4, page 2, line 2, at the end of the line change the word 'title' to 'proposition'."

PRESIDENT EGAN: Is there objection to the introduction of this amendment at this time?

SUNDBORG: It would then say "The secretary of state shall prepare a proposition and summary of the proposed law and shall place them on the ballot ..." etc.

TAYLOR: I object.

PRESIDENT EGAN: Objection is heard. Mr. Taylor.

TAYLOR: Just for the purpose of clarification I think that that should read "a ballot title". "A ballot title and proposition" should go in there because the ballot has a title, and the proposition which the people are voting on. It's a

combination of the ballot title and proposition.

PRESIDENT EGAN: Is it "ballot title, and proposition," is that the way you would say it? Or "ballot, title, and proposition"?

TAYLOR: No. "Ballot title". "Ballot" is the descriptive word of "title"; "ballot title and proposition of the proposed law". "The summary of the proposition" is what it, should be.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I wonder if I could --

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

RECESS

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

SUNDBORG: Mr. President, I would like to ask unanimous consent to withdraw the amendment which I proposed a few minutes ago on behalf of the Committee.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent to withdraw the amendment he proposed a few moments ago. Is there objection? If there is no objection it is so ordered. Mr. Sundborg.

SUNDBORG: Mr. President, I would now like to propose a committee amendment. "On page 2, lines 2 and 3, strike 'title and summary of' and insert in lieu thereof 'ballot title and proposition summarizing'." May I correct what is to be deleted? It should say "title and summary of". No. Excuse me. It was right the first time, so that it would read "The secretary of state shall prepare a ballot title and proposition summarizing the proposed law and shall place them ..." etc. I ask unanimous consent.

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent for the adoption of the proposed committee amendment. Is there objection? If there is no objection the amendment is ordered adopted. Mr. Sundborg.

SUNDBORG: Mr. President, I would like to move that the same change be made on line 12, so that it will read "The secretary of state shall prepare a ballot title and proposition summarizing the act..." etc. I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked for adoption of the amendment. Is there objection? Hearing no objection the amendment is ordered adopted. Mr. Robertson.

ROBERTSON: Mr. President, how will line 12 read where the word "act" is used whereas in line three the word "law" is used?

SUNDBORG: Mr. Robertson, that is intentional. Section 4 deals with the initiative, and it is a proposed law.

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

SUNDBORG: Section 5 deals with the referendum and it refers to the act of the legislature which is being referred.

PRESIDENT EGAN: Are there other questions? Mr. Metcalf?

METCALF: May I ask Mr. Sundborg a question?

PRESIDENT EGAN: You may ask the question, Mr. Metcalf.

METCALF: On the first page, line 16, you use the phrase "general election" and then on line 4, second page, you use the phrase "first statewide election". You meant "general election", either "primary" or "general", did you not, sir?

SUNDBORG: No, Mr. Metcalf. Those both come directly from the language of the enrolled copy; and in the first case we are talking about a required number of people who may sign the petitions. It was the intention of the Convention to refer that, to relate that, to the number who signed, or rather, who voted in the preceding general election. Now, that is a different matter entirely from what we have here in Sections 4 and 5, which is that, after all the requirements have been made and the petition has been filed, it is placed on the ballot at the first statewide election, whether it is a primary election, a general election, or a special election. That was an amendment made on the floor, and it was explained at that time that the desire was to get it on the first statewide election of whatever character.

METCALF: Then to save money we wouldn't have to call a special election every time some group of people decided to have an initiative? Was that the intention?

SUNDBORG: That was the intent, yes.

PRESIDENT EGAN: Are there other questions with relation to Sections 4 or 5? If not, are there questions relating to Section 6? Mr. White.

WHITE: Mr. President, I note what appears to be an inconsistency here.

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

WHITE: It is not any doing of Style and Drafting but I would like to direct a question to the Chairman of Style and Drafting to find out if they discussed it. In Section 6, Mr. Sundborg, "A majority of the votes cast on the proposition is necessary for the enactment of an initiated law or for the defeat of an act referred." I refer to the words "defeat of an act referred". Now going back to Section 1 we say "approve or reject acts of the legislature by the referendum". Now if I understand referendum correctly it would say something like, "Shall such-and-such an act of the legislature be approved by the voters, yes or no?" So that it appears to me that perhaps a substantive change is necessary here in third reading. Did that come up in Style and Drafting?

SUNDBORG: I don't think that the particular question has been raised, Mr. White. Of course, the original says just what we say now in our draft. In Section 6, we say "A majority of the votes cast on the proposition is necessary for the enactment of an initiated law or for the defeat of an act referred." The second case there covers a law which is already on the books and in effect, and the only change that could be worked by the voters would be to defeat it. If they approve it, nothing happens, really. They are confirming what the legislature did.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, the referendum [two words not audible] on an existing law, it carries the burden of rejection. The burden isn't the burden of rejection; it takes a majority to reject. Now they could use the word "rejection" here instead of "defeat" if that would help any but I think it is perfectly clear the way it is. That all fits in with the idea of a possible veto by the people.

PRESIDENT EGAN: Mr. White.

WHITE: If no change in substance is necessary here, then I would merely suggest that it be merely a matter for Style and Drafting because the two sections do not read the same, Section 1 and Section 6.

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

SUNDBORG: I believe that if we drop the words "approve or" from line 2 of page 1, we wouldn't really be dropping anything because if the people reserve the right to reject acts of the legislature, it is really the right which they wish to reserve; they don't necessarily want to reserve the right to approve them because they are in effect and will remain in effect whether they take them to the referendum or whether they do that and approve them. There is no difference. We could make it read, "The people may propose and enact laws by initiative" -- wait, no -- "The people may propose and enact laws by the initiative and

reject acts of the legislature by the referendum."

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I think though that that word "approve" should be left in there because sometimes we will have an act of the legislature that has been submitted and in it is that the thing be referred to the people for approval or rejection. Now, we have had in our legislature in Alaska here, we have referred acts, or propositions, to the people. We had one on the fish traps, we had one on the blanket primaries, and it was approved. Those things were approved and so we felt that that should be in there because many times in the states the legislators will pass the buck to the voters. It might be unpopular in certain quarters so the legislator says "Well, we will refer this to the people for approval or rejection," so I think the word "approval" has to be in there.

SUNDBORG: Mr. President, in view of that, and if the Convention agrees, I think on page 2, line 18, after the word "the", which is the fourth word on the line, that we insert "approval or" so that the sentence would read: "A majority of the votes cast on the proposition is necessary for the enactment of an initiated law or for the approval or defeat of an act referred."

PRESIDENT EGAN: Do you ask unanimous consent, Mr. Sundborg?

SUNDBORG: Yes. I ask unanimous consent.

TAYLOR: I would like to ask a question. Do you not believe it would be better if it be before the "rejection or approval of the act referred"? Rejection, it says it can be rejected.

SUNDBORG: "Rejection" is all right but I believe the order ought to be "approved or rejected" as it is in Section 1, or else the order ought to be reversed in both cases.

TAYLOR: Yes, that is so, but so they would be consistent.

SUNDBORG: You would prefer, Mr. Taylor, "approval or rejection"?

TAYLOR: Yes, I believe that would be --

SUNDBORG: I have no objection to that, and I will include that in my request for unanimous consent, that we strike on line 18 the word "defeat" and insert in lieu thereof "approval or rejection".

PRESIDENT EGAN: Mr. Sundborg asks unanimous consent for the adoption of the proposed amendment. Is there objection? Hearing no objection, the amendment is ordered adopted. Mr. Taylor.

TAYLOR: I would like to refer back to Section 5. Was it not the intent of the Committee to change "120" days which comes in line 14; to change that to "180" days?

SUNDBORG: That is correct. But our Committee did not offer that as a committee amendment, but we suggested it as something which was sensible and I believe the reason is set forth in our covering letter. What this says is that, "A referendum petition must be filed within 90 days after adjournment of the legislature..." And it has to go on the ballot of the first statewide election held more than 120 days after adjournment. Well, there is a difference of only 30 days between the time when the thing has to be filed and the time it may have to go on the ballot, which time, 30 days is not at all adequate for preparing the ballots and distributing them around the state, and having them ready for the election. Our suggestion was that the "120" on line 14 be changed to "180".

TAYLOR: Our original draft -- our original proposal as submitted by the body was "180" days. We had that up in the Committee and felt it was a difference of opinion as to the time. Some of us felt it should be "180", and I think it came out as "180" as I see it in the original draft here.

PRESIDENT EGAN: Do you ask unanimous consent for that?

TAYLOR: Yes, unanimous consent that that be substituted for "120".

PRESIDENT EGAN: Is there objection?

R. RIVERS: I object solely for the purpose of furthering the discussion a little bit.

PRESIDENT EGAN: Do you so move, Mr. Taylor? TAYLOR: Yes.

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

KNIGHT: I second it.

PRESIDENT EGAN: Mr. Knight seconds the motion. Mrs. Hermann.

HERMANN: A point of order.

PRESIDENT EGAN: Your point of order, Mrs. Hermann.

HERMANN: This is an amendment as to substance and the motion should be to suspend the rules.

PRESIDENT EGAN: That is right if there is objection to the

unanimous consent request.

R. RIVERS: May I have the privilege of commenting?

PRESIDENT EGAN: If there is no objection, Mr. Ralph Rivers, you may have the privilege.

R. RIVERS: And then perhaps I'll withdraw my objection. The Committee's covering letter indicates that legislatures have ended their labors some time in the latter part of March. The year around legislature we are talking about is not necessarily going to do that. It may run on until around the first of May and then you wouldn't have 180 days left over until the next general election. Our communications are speeding up all the time, the printing and distribution of the ballots doesn't take as much time as they used to in the dogteam days; and if you are going to have a legislature that runs quite a while and you put in 180 days you are going to miss the next general election. Now I like 120, and I think our facilities are such that they could get on the ball and get out those ballots in 120 days. Now that is the only reason I am objecting.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I know it is physically impossible, no matter how much we speed up the printing, etc., from the time a petition is filed with the secretary of state, to have the proposition on the ballot at an election only 30 days afterwards, which is what this provides. It says they have to be filed within 90 days after adjournment, but they may have to come up at an election only 120 days after adjournment. Now, I don't care when the legislature adjourns. I believe that there should be a longer length of time than 30 days for the secretary of state to check these petitions and see whether the people who sign them are qualified voters, to call for bids on the ballot, to summarize the proposition, etc., to get them printed, which is a big job here because we have the requirement that the names have to be rotated on the ballot and it is a very slow process in any printing shop and can't be done entirely by machinery. It entails a lot of hand work; and then to distribute them throughout the state and get them into these polling places just can't be done in 30 days.

R. RIVERS: I withdraw my objection.

PRESIDENT EGAN: Mr. Ralph Rivers withdraws his objection. Mr. Hellenthal?

HELLENTHAL: Did you give a thought to changing the "90" to "60" on line 10?

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

RECESS

PRESIDENT EGAN: The Convention will come to order. Do we have a proposed amendment before us at this time? Mr. Sundborg.

SUNDBORG: Mr. President, I believe it has been proposed that in line 14, page 2, the word "20" be changed to "80", and as I recall it, Mr. Hellenenthal had objected to Mr. Taylor's unanimous consent request for adoption of that amendment.

PRESIDENT EGAN: It has been moved and seconded.

HELLENTHAL: I had not objected, I was just inquiring.

PRESIDENT EGAN: If there is no objection there would be no need to suspend the rules because that would amount to the same thing. If there is objection it would be necessary to suspend the rules in order to attempt to adopt this amendment. Is there objection to the unanimous consent request? Will the Secretary please read the proposed amendment.

CHIEF CLERK: "Line 14, page 2, change '20' to '80'."

PRESIDENT EGAN: Is there objection to Mr. Sundborg's unanimous consent request for the adoption of the amendment? Hearing no objection the proposed amendment is ordered adopted. Are there other proposed amendments or questions with relation to Sections 4, 5, or 6? Mr. Sundborg.

SUNDBORG: I think I should explain that in Section 6 a number of changes have been made, or they are proposed by the Committee. The first one occurs in line 16 where we say "a majority of the votes cast on the proposition". The enrolled copy said only "a majority of the votes cast is necessary" and it might have been misinterpreted as being "a majority of all the votes cast in the election" whether on this matter or not. I believe it was the intent of the Convention that it should be "a majority of the votes cast" on the particular thing under consideration. Then we have added here what was not in the enrolled copy at all and there appears on lines 18 and 19 the sentence, "The secretary of state shall certify the election returns." There was no reference to that in the enrolled copy but we thought it was a desirable amendment. Then we have provided, starting on line 19, for the effective dates, "An initiated law is effective 90 days after certification," and then we have kept in what was in the enrolled copy, "... is not subject to veto and may not be repealed by the legislature within two years," and we have added: "of the effective date". The enrolled copy said that it could not be repealed within two years but it left it very much up in the air when you start counting the two years. Does it count from the time the original petition is filed, from the time the legislature is held, or the time the law goes into effect? We suggest the

period of 90 days in the case of the initiative because that is the same length of time it requires an act of the legislature to take effect after adjournment. In the case of the referendum, it was our feeling that if some law has been found not desirable by the public they should not have to live under it for a whole 90 days after they have rejected it but that 30 days would be enough. We felt that time should be provided after certification because it might be that it would be a very close election and it would be decided by only a very few votes. The people of the state would not know right up to the very moment the secretary of state certified, whether the matter had been approved or rejected and we felt that some time should be allowed so that all citizens of the state would have some warning of a law that was then on the books becoming void. I think nothing else has been changed in this section.

PRESIDENT EGAN: Is there further discussion with regard to Sections 4, 5, or 6? Mr. Taylor.

TAYLOR: I would like to ask Mr. Sundborg one question. I don't have the enrolled copy before me but on the last line of page 2 you shortened it up quite a bit. It says "Additional procedures for the initiative and referendum may be prescribed by law." Now did the Committee on Style and Drafting have in mind that the procedures of initiative and referendum could be further changed by the initiative or referendum or should they be changed by the legislature? I know we had that before us in the Committee and we felt that that should be by the legislature; that further procedures for initiating a proposition or a referendum should be prescribed by the legislature in addition to what is prescribed here by the constitution.

SUNDBORG: I am sure our Committee would have no objection to saying instead of "may be prescribed by law" to saying "may be prescribed by the legislature", but I feel that under the action taken here several days ago where we agreed that whether it says "by law" or "by the legislature" it could be done by the initiative as well as by the legislature. It doesn't make any practical difference.

TAYLOR: I know it was the intent of the Committee when we referred that out to the Convention that the legislature could prescribe further, that is, to implement the act they could prescribe further procedures.

SUNDBORG: Well, I would say under the action we have taken it doesn't make any difference and if the Convention wanted to prevent the procedures on initiative and referendum from being set up further by the initiative, they should write that in as one of the restrictions on the initiative in Section 7. I don't see that it makes any great difference. I can't think that there would be very many initiative propositions that would seek to change initiative procedure although there conceivably

could be, and I don't know that it would be bad if the people wanted to change the method of doing this since they have reserved the power to do it, and what they have proposed to be consistent with the constitution, I think they should have that right but that is certainly a substantive matter which is not up to our Committee.

METCALF: May I ask Mr. Sundborg a question?

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

METCALF: You did not include Section 3 from our enrolled copy did you? It says, "The legislature shall prescribe the procedures ..."

SUNDBORG: In our thinking, Mr. Metcalf, the exact thought is covered at the end of Section 6. Now as it appeared in the enrolled copy it said, "The legislature shall prescribe the procedures to be followed in the exercise of the powers of initiative and referendum except as herein provided." And then, in effect, we spell out what the procedures will be anyway. Now what we have said after telling what the procedures are, we said, "Additional procedures for the initiative and referendum may be prescribed by law."

METCALF: You changed the word "shall" to "may"?

SUNDBORG: Well, since it is additional and it is questionable whether any additional ones are required, we thought that "may" covered the situation better than "shall". Now, if we said additional procedures "shall" be prescribed by law the legislature would have to rack its brains and try to think of something else and we don't think anything else is necessary.

METCALF: Well I think something else is, in connection with my experience with some of the petitions for liquor licenses. Oftentimes misunderstandings and arguments have developed about whether signers have been bona fide residents in a community, and I can see that is one thing I think the legislature should prescribe, a little law of procedures on. In fact, in my original draft of a proposed initiative and referendum I had provided for that. I would prefer the word "shall" just exactly as the Committee and as the enrolled copy shows.

SUNDBORG: I think we can get to that but as far as the matter of the voters is concerned we say that it has to be signed by "qualified voters" and elsewhere in the constitution we define "qualified voters", so I don't think it is necessary to write in any further restrictions here or to require the legislature to do so. It is already defined in the constitution. Now, if we accepted your suggestion I take it we would say on the bottom two lines of page 2, "Additional procedures for the initiative

and referendum shall be prescribed by law." I would think that would have to carry "if necessary" or something of that kind because I don't know why --

PRESIDENT EGAN: Mr. Gray.

GRAY: May I have Mr. Metcalf's idea? The intent as I received it is that the authorization is for the legislature to create additional procedures but "shall" is a mandate. Now it may not be a necessity. The intent of the whole thing is authorization and the "may" seems to me to give the legislature the authorization. I think you gain nothing by the word "shall".

METCALF: That is only in the enrolled copy and it was the Committee's thinking on the matter that it should be "shall". There is no doubt there would have to be some little law passed governing and regulating the use of initiative and referendum procedures and there has been lots said about those two little words of "shall" and "may" and personally I still prefer "shall".

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

RECESS

PRESIDENT EGAN: The Convention will come to order. Are there other questions with relation to Section 6? If not, are there questions relating to Section 7? Mr. Sundborg.

SUNDBORG: Mr. President, I should explain here what we have done in Section 7. Let me read first what the enrolled copy said. It said, "The initiative and referendum may not be used as a means of earmarking revenues, for making or repealing appropriations of public funds, or for local or special legislation." That applied to both. Then it went on to say, referendum shall not be applicable to such laws as are necessary for the immediate preservation of the public peace, health or safety, and laws making appropriations for the current expenses of the State government, and for maintenance of public institutions." What we did, we tried to take apart from that section what it was that the Convention intended that the initiative should not apply to and set that up in one set of restrictions, and then in a separate set of restrictions say what the referendum may not apply to, and we have developed the language which appears in our Section 7. It says, "The initiative may not be used to dedicate revenues, make or repeal appropriations, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health or safety." Now, analyzing again from the enrolled copy, the first thing it said was as a means of earmarking revenues". Well, obviously, I think, the referendum could not be used as a means of earmarking

revenues because the referendum can only approve or reject laws which have been passed by the legislature. Now, we have used instead of "earmarking" the term "dedicate revenues" because I believe after a study was made of this, that the dedication of revenues is really what was meant instead of the earmarking thereof and our advisers were unanimous on that, and if anyone would like a little further discussion of that subject, Mr. Hurley, who is a member of our Committee, is able to give it -- the difference between "earmarking" and "dedication" -- and I am sure that it was "dedication" that was intended as a restriction here. "Earmarking", in addition, is sort of a slang phrase and I don't believe it occurs in very many constitutions. If there is any doubt on that I would like to have Mr. Hurley explain it.

PRESIDENT EGAN: Would the delegates care to have Mr. Hurley explain it? Mr. Hurley, would you care to explain the difference between "dedicating" and earmarking"?

HURLEY: Mr. President, I was kind of dealt a low blow because I didn't know that I was the one who had to defend this. I might say to start with it did create some problem because the Finance Committee also refers, in their enrolled copy, to the matter of "earmarking" revenues. I don't think it is an extremely serious problem; one as serious as the Chairman may have indicated, but in pursuing the other constitutions and the definitions of "earmarking" as revealed in various dictionaries and other word descriptions, it appeared that the term "earmarking" might also be applied to the allocation of revenues appropriated by the legislature to a given department; appropriated, for example, \$500,000 to the Fish and Game Commission and earmarking within that a \$100,000 for the propagation of salmon, whereas the term "dedicating" appeared to be starting from the beginning of the process, that they were prohibited from the start; and it was suggested that situations did arise and that perhaps the word "dedicating" would better express what we had in mind that these funds were not within the realm of the legislature to appropriate out of the general fund. Now I might say that the word is not sacred and if someone has a better idea I am sure we will be glad to listen to it.

PRESIDENT EGAN: Mr. Gray.

GRAY: I would like to ask Mr. Hurley if he found the words "dedicated funds" in any other legal documents or constitutions.

HURLEY: Yes, we did. And I might carry it one step further and that we did also find the term "earmarking" used in other connections other than "dedicated funds" so it was just a balance.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I am sure that the Finance Committee has no objection to that definition but it seems to me that dedication could be interpreted in the same way. One point I do wish to make here, though, is that I hope when Style and Drafting comes to the finance article they will retain the idea of dedicating of taxes. It may or may not be important here but there is a difference between earmarking or dedicating taxes and the earmarking or dedicating of revenues. I just bring it up here for the consideration of the delegates. In my own mind I don't think the distinction is important in this particular instance but it is later on in the finance article.

PRESIDENT EGAN: Are there other questions? Mr. Sundborg.

SUNDBORG: Mr. President and Mr. White, I take it you mean "revenues" could include taxes but it might also include other things; for instance, licenses, fines, etc., might be included in the term "revenues" whereas taxes would be only taxes.

WHITE: The reason that we made the distinction, Mr. President, is because all proceeds coming to the state are revenues really, and you have to dedicate or allocate revenues to special purposes, whereas what we are trying to get at is the allocation or dedication or earmarking of the proceeds of a particular tax to a particular purpose. That is the distinction we made. I just bring it up for consideration here. As I say, in my own mind I don't think that distinction is too important in this particular case. Somebody else might disagree with me.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I just have a word. I think that the word "earmarking" can be used as we use the term "line appropriations" in our own parlance in our own legislature, but a revenue is dedicated from the time it is collected. That is what this meant.

PRESIDENT EGAN: Are there questions with relation to Section 8? Mr. Sundborg.

SUNDBORG: The next item in the enrolled copy was "making or defeating appropriations of public funds". We felt "of public funds" was not necessary because the only appropriations with which the state could deal are public funds anyway; and then we said, "or enact local or special legislation" which is the same as it was in the enrolled copy. Now it went on to say over again we thought in some cases that the referendum "shall not be applied to laws making appropriations for the current expenses of the State government and for the maintenance of public institutions". We have already said in the first sentence that, "The initiative and referendum may not be used as a means of earmaking revenues, for making or defeating appropriations of public funds" and we believe those

appropriations would have to be included --

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order.

SWEENEY: The enrolled copy is in error in that last portion of that sentence, the material after "health and safety", beginning with the word "and" to the word "institution" should not have been on the enrolled copy. Through the mechanics of engrossing and enrolling in the early stages this was an error that we did not pick up. I have just checked the enrolled copy and also the journal and for those who wish to check they will find that on December 17 all the words after "safety" were stricken and they should not have been shown on the enrolled copy. So it is probably not in order even to discuss that motion, Mr. Sundborg.

SUNDBORG: Mr. President, we proceeded in our Committee without knowing that. After analyzing it, those words were redundant and unnecessary, and they are not included in our draft because we figured they are covered fully by the word "appropriations" on line 2 of the page 3.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: A point of information through the Chair as to the question by Mr. Sundborg. Mr. Sundborg, on that "local or special legislation", would that refer that the legislature could not refer to the people any legislation under the referendum, on say, a bonding issue, a Territorial or statewide bonding issue for a specific purpose, or referring to them a road project as to taking part in, perhaps, a national road program that would revert to the state.

SUNDBORG: Mr. President and Mr. Coghill, I believe that the restriction here is upon the referendum; the referendum as defined in this article which requires the filing of an application, the preparation of a petition, and the obtaining of a lot of signatures to get a proposition on the ballot. Now, I think there is nothing in this, and nothing elsewhere, that would prevent the legislature from simply saying in the law that, "This law shall become effective after it has been approved at the general election of such-and-such a date." That is not really the referendum as it is described in this article which is one on direct legislation initiated by the people. I am sure the legislature has that power without any reference to what is in this article.

PRESIDENT EGAN: Are there other questions with relation to Section 7? Mr. Poulsen.

POULSEN: Mr. President, may I ask Mr. Sundborg a question?

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

POULSEN: Would you have much objection, Mr. Sundborg, to inserting the word "earmarking" as it was in the old copy before? That is a word that pretty nearly everybody understands and knows what it is all about. This other one I am doubtful about.

SUNDBORG: You mean in place of "dedicating"?

POULSEN: Yes.

SUNDBORG: Well, I feel we would object because it has a different meaning. Now "earmarking" means any time you say that an appropriation or any other thing shall be for a specific purpose. The example that was used by Mr. Hurley would be that it would be earmarking part of the appropriation to the Fish and Game Commission, to say that a \$100,000 of it should be used for the propagation of salmon, and we think that was not what we intended as a restriction on the initiative here. I think that what was intended was that we should not interfere with what is a "dedicated" revenue. A "dedicated" revenue, for instance, is the idea that tobacco taxes are used for school construction or maintenance. That is a "dedicated" revenue right from the time it is collected. It can't be used for anything else. Now it was our belief that that is what the Convention had in mind when they wanted to remove a certain class of legislation from being touched by the initiative.

PRESIDENT EGAN: Mr. Poulsen.

POULSEN: I don't believe that is the case here. We have a certain amount to be earmarked that cannot be touched but this is set up so there can be no more earmarking of any kind.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. Poulsen, did you understand though, that "earmarking" had more than one meaning. When the legislature appropriates a \$100,000 for a particular purpose that is "earmarking" and we don't want to prohibit the legislature from appropriating.

POULSEN: Well, I call that appropriating.

R. RIVERS: With two meanings to the word "earmarking", "dedicating" talks about the origin of the money and it can't be earmarked, you might say from the beginning, when at the time it is collected, so I think we must say "dedicating".

PRESIDENT EGAN: Are there other questions? Mr. Cooper.

COOPER: Where will the additional exceptions to the initiative and referendum be placed? In this article 7 under restrictions, or is there going to be a section at the end of the constitution?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I don't know what Mr. Cooper means by the additional exceptions. There aren't any, to our knowledge, that are before us at this time. Now some might be proposed.

COOPER: That is just exactly what I mean. If we adopt this now, there are other exceptions that are certainly going to have to come from this floor that the initiative and referendum will not have any effect on, and will they be placed in Section 7 with restriction or will there be a special article of just exceptions?

SUNDBORG: My belief is, Mr. President, that they would be inserted in Section 7 of this article as additional restrictions of subjects which would not be subject to the initiative and referendum, and any such additions as are made, of course, would take a two-thirds vote anyway, if it is something that has not yet been considered by the Convention in second reading, and I believe everything now has been except a few ordinances, etc. So, the procedure in case anyone should wish to remove some class of legislation from the action of the initiative and referendum would be to propose an amendment to Section 7, writing in that class or subject as an additional restriction.

COOPER: Do I understand then, Mr. President, that any exception now, inasmuch as this rule of Mr. McLaughlin's was amended -- the motion was adopted last Saturday, then it would take a two-thirds vote to get an exception put in Section 7 now with the restrictions?

PRESIDENT EGAN: It would Mr. Cooper; yes, if it was something that had not been considered up to this time.

COOPER: I had in mind, in the legislative article it said, "The legislators or elected officials shall receive a salary and compensation as prescribed by law." Now, under the terms of this adoption of the motion last Saturday, I can right well see where a public would get very mad at their legislators, and immediately circulate a petition in which their pay would be \$1 a year and the expenses would be half of that.

PRESIDENT EGAN: The Convention will come to order.

COOPER: It very possibly could be done and I think that the salaries of the elected officials of the state, that the public or the initiative and referendum should have no right in

adjusting or cutting out such salaries.

SMITH: Point of order.

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

SMITH: I believe we have before us the report of the Committee on Style and Drafting and the question is whether or not we accept this report, subject to whatever changes the body might make. Any amendments would necessarily come up when this approved report comes before us for third reading.

UNIDENTIFIED DELEGATE: No.

PRESIDENT EGAN: Amendments can be made now, Mr. Smith.

SMITH: Amendments can be made now?

PRESIDENT EGAN: Yes. A new amendment would take a two-thirds vote. Mr. Sundborg.

SUNDBORG: Mr. President, before we open this up to additional amendments, aside from those made by the Committee, I wonder if we could ask that the committee report be adopted. I mean, I would ask you to have that order of business before we open it up to general amendments. It could still be amended by a two-thirds vote but I would like to have our report, which would embody the changes we have made, adopted by the Convention before we try to work in any additional amendments.

PRESIDENT EGAN: Is that the proper procedure? We only adopt or reject your report, Mr. Sundborg, along the lines that we have been proceeding, that if you have made some substantive amendment and the delegates felt that it was a substantive change and desired not to accept that, they have been discussing those changes. It isn't necessary, we don't move to adopt your report.

SUNDBORG: Mr. President, I believe our rules set forth, as one of the steps in the workings of this Convention, that there shall be a report from the Committee on Style and Drafting and then the next order is the acceptance, or consideration of the report of Style and Drafting and, it says, "action on amendments which are changes in phraseology only."

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

RECESS

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

SUNDBORG: Mr. President, if there is no further discussion, I move that the Convention accept the report of the Committee on Style and Drafting as it has been amended on the floor this morning.

PRESIDENT EGAN: Mr. Sundborg moves the acceptance of the report of the Committee on Style and Drafting. Mrs. Hermann.

HERMANN: A point of inquiry. Have we had questions on the last section? I don't remember hearing that come before us.

PRESIDENT EGAN: The Chair called for questions but no questions were asked as yet. Before this motion is put, if anyone has a question -- Mr. Metcalf.

METCALF: There was some question raised when we discussed the judiciary proposal as to whether any exceptions to the jurisdiction and formation of the courts would be made in the initiative and referendum. I wonder if that was still intended?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, I believe that would still be in order after the Convention accepts the report of the Committee on Style and Drafting.

MCCUTCHEON: I second the motion.

PRESIDENT EGAN: Mr. McCutcheon seconds the motion. That is right, Mr. Nolan, it would take a two-thirds vote though to put such an amendment in. Mr. Robertson did you have something?

ROBERTSON: No.

PRESIDENT EGAN: The question is, "Shall the Convention accept the report of the Style and Drafting Committee? It relates to Article XI, the article on initiative, referendum and recall." Mr. Marston.

MARSTON: As a member of this Committee I want to compliment the Committee on Style and Drafting for the work they have done. I think they have improved and clarified it and I am very happy with it. I see no reason why we shouldn't accept this report at this time and I so move.

PRESIDENT EGAN: It has been moved and seconded that the report be accepted. The question is, "Shall the report be accepted by the Convention?" All those in favor -- Mr. Hellenthal?

HELLENTHAL: Since, by the admissions of the Committee itself, substantive changes are required here, I think as a matter of good policy we should take a roll call on this, because, in effect, we are suspending the rules, because they say they have

made changes of substance which, of course, we all approve but let's get the record right.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent is asked that the Convention accept the report by the Committee on Style and Drafting. Is there objection?

POULSEN: I object.

PRESIDENT EGAN: Objection is heard. The Chief Clerk will call the roll.

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

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 5 - Hinckel, Laws, McCutcheon, Poulsen, Reader,

Absent: 3 - Davis, Hilscher, McLaughlin.)

MCNEES: I ask that my vote be changed to "yes".

PRESIDENT EGAN: Mr. McNees changes his vote to "yes". The Convention will come to order.

CHIEF CLERK: 47 yeas, 5 nays, and 3 absent.

PRESIDENT EGAN: So the report has been accepted. Mr. McCutcheon.

MCCUTCHEON: Mr. President, I ask that the rules be suspended and, that Article XI be returned to second reading for specific amendment.

PRESIDENT EGAN: Mr. McCutcheon moves that the rules be suspended and that Article XI be returned to second reading for specific amendment. Mr. Fischer.

V. FISCHER: A point of information. Will this be for one specific amendment and are we to know before we vote what the specific amendment is?

PRESIDENT EGAN: Mr. McCutcheon, will you state the purpose for the request to return it to second reading? Mr. Robertson?

ROBERTSON: Mr. President, I desire to offer an amendment to Section 7, line 2, to insert the words following "appropriation," to insert the words "to create courts, define the jurisdiction or prescribe the rules thereof," in line with our discussion here Saturday on the judiciary article.

PRESIDENT EGAN: The question is -- unanimous consent is asked that the rules be suspended for that purpose. Is there objection?

KILCHER: I object.

PRESIDENT EGAN: Objection is heard.

MCCUTCHEON: I so move.

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. McCutcheon moves, Mr. Taylor seconded the motion. The question is, "Shall the rules be suspended?"

R. RIVERS: Is this debatable?

PRESIDENT EGAN: It is not debatable, the motion to suspend the rules, Mr. Rivers. Mr. Hurley?

HURLEY: Point of information.

PRESIDENT EGAN: Your point of information?

HURLEY: Is this just to suspend the rules for that one particular thing?

PRESIDENT EGAN: That is correct, Mr. Hurley, under the motion that the rules be --

MARSTON: May I ask a question Mr. President? My vote on this will be determined on how many more are going to come in here. If I could find that out, I would like to know some way. Is that a fair question?

PRESIDENT EGAN: At this time -- Mr. McCutcheon.

MCCUTCHEON: My point of order is that I have asked for the suspension on a specific amendment. I didn't say for "amendments", I said "a specific amendment". Mr. Robertson, it is for one specific amendment.

PRESIDENT EGAN: That is right. It is for that one amendment at this time. Mr. Sundborg.

SUNDBORG: If we suspend the rules, the specific amendment would still be subject to a vote of the body, is that correct?

PRESIDENT EGAN: That is correct, Mr. Sundborg.

SUNDBORG: So, all we are voting on is, shall we suspend the rules.

PRESIDENT EGAN: A suspension of the rules. The question is, "Shall the rules be suspended in order that the proposal may be sent back to second reading for specific amendment?" The Chief Clerk will call the roll.

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

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Doogan, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, McCutcheon, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 5 - Coghill, Emberg, Kilcher, Londborg, Peratrovich.

Absent: 3 - Davis, Hilscher, McLaughlin.)

CHIEF CLERK: 47 yeas, 5 nays, 3 absent.

PRESIDENT EGAN: So the "yeas" have it, the rules have been suspended and Article No. XI is now before us in second reading for specific amendment. The Chief Clerk may please read the proposed amendment. The Sergeant at Arms will place the amendment on the Chief Clerk's desk.

CHIEF CLERK: "Section 7, page 3, line 2, after the comma following the word 'appropriations' insert 'create courts, define the jurisdiction or prescribe the rules thereof,'."

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

ROBERTSON: I ask unanimous consent for the adoption of such amendment.

PRESIDENT EGAN: Mr. Robertson asks unanimous consent for the adoption of the proposed amendment. Is there objection? Mr. Buckalew?

BUCKALEW: May I ask a question?

PRESIDENT EGAN: If there is no objection, Mr. Buckalew, you may ask the question.

BUCKALEW: Mr. Robertson, wasn't it your intent to prohibit the use of the initiative at all, as far as the judicial article is concerned?

ROBERTSON: That is my personal desire but I took the position that this particular amendment doesn't go that far, I don't think, because I thought that the delegates as a whole would agree with my view and I believe, with the members of the Judiciary, that creation of courts, and the defining of their jurisdiction and prescribing their rules should not be left to the initiative. For that reason my amendment doesn't go as far as your suggested question.

BUCKALEW: My thought was and that is what I thought Mr. Robertson was going to do was to except the judicial article from the initiative. I would like to hear from Mr. McLaughlin if it is in order.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Robertson?

ROBERTSON: Mr. President, my proposed amendment is calculated to simply except from the initiative the creation of courts, the defining of their jurisdiction, and the prescribing of the rules, which I believe is self-evident. It is a good thing and shouldn't be left, as I stated on the floor Saturday, to a mass vote because those things are all highly technical. If you are going to do those things you need witnesses before a legislature. You don't need campaign orators on the subject. Furthermore, it avoids the possibility of a group of dissatisfied litigants, if a judge renders some particular decision that they feel is contrary to their best interests, of getting out and starting an initiative to create a new court by which he will be deprived of his jurisdiction. I believe that the amendment should be carried. I sincerely hope it will. I am perfectly willing to admit that, myself, I would be in favor of exempting the judiciary system entirely from it but I don't claim that my amendment has that extent.

PRESIDENT EGAN: Is there objection to Mr. Robertson's unanimous consent request? Mr. Marston?

MARSTON: Mr. President, may I ask Mr. Robertson a question?

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

MARSTON: If this is granted, your request here, will you not go further with more attempts to finally do what you want to do to delete from the initiative? If I get that answer I will know how to vote on this. I think that is a fair question.

ROBERTSON: I am perfectly willing to answer so far as I am concerned -- that is my agreement.

PRESIDENT EGAN: This is the only amendment we can possibly make at this time, Mr. Marston.

MARSTON: If this continues, I'll say now that I am going to oppose with all my power any further changes. I will go along with this, but this is the end of it.

PRESIDENT EGAN: Mr. Marston, are you objecting to the unanimous consent request?

MARSTON: I'm going along if there are no more amendments from the floor of this sort.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: A point of information. Will the Committee on Style and Drafting have an opportunity to check the language on this after it is adopted?

PRESIDENT EGAN: No. Even after we pass the article, if we do adopt the article, the Style and Drafting Committee will have an opportunity to look it over. If there is no objection Mr. Coghill.

UNIDENTIFIED DELEGATE: I object.

PRESIDENT EGAN: Objection is heard. Mr. Robertson, do you so move the adoption of the amendment?

ROBERTSON: I so move.

TAYLOR: I second the motion.

PRESIDENT EGAN: It has been moved by Mr. Robertson, seconded by Mr. Taylor that the proposed amendment be adopted. Mr. Coghill?

COGHILL: A point of information and may I address the question to the Chairman of the Judiciary?

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

COGHILL: The prescribing of the rules of the court, what does that take in?

MCLAUGHLIN: Unfortunately, I have a different viewpoint on the subject than Mr. Robertson does. On the question of these rules, we have given the rule-making power to the supreme court for all courts, and I frankly don't think under the "55-idiot rule", if I may -- (Laughter)

PRESIDENT EGAN: The Convention will come to order. Mr. McLaughlin has the floor.

MCLAUGHLIN: I don't think actually, by the initiative, that the people would be able to reach change the rules of the courts, largely because we have provided in the judiciary article that the supreme court can adopt the rules for all courts and those rules will remain in effect until reversed by two-thirds of the elected members of each house. So under what is known as the "55-idiot theory" -- Mr. Chairman, I know this is objectionable -- no 110 idiots would ever suggest, under the wording of the judiciary article, the rule-making power, that, by the initiative, could we change the rules of any courts. I see, personally, no objection. I am in favor of the initiative - I see no objection to Mr. Robertson's amendment as such. I will refrain from speaking a very personal intimate opinion of the thing. I don't think it affects the judiciary and I don't think it affects the initiative.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, may I further the question? The deletion, or the part of Mr. Robertson's amendment here, would not actually be in reference to law, would it? It would be up to the supreme court and up to the judicial council.

MCLAUGHLIN: Possibly. The prescribing of rules thereof would be subject. I believe, to the supreme court and couldn't be reached by initiative, but as to the creation of courts and defining their jurisdictions, that I feel, that is, other than your constitutional courts, could be reached by the initiative. I am quite sure that I know what Mr. Robertson's concern is. There is also a popular and happy belief that if you have a problem, let us say of juvenile delinquency, all you have to do is create a new court and as soon as you get a new court the problem disappears or is the responsibility of the court if the problem doesn't disappear. That is a blatant fallacy but Mr. Robertson, I suspect, is fearful that the people might become sufficiently stirred up over the dog problem in the Anchorage area, or the juvenile problem in the Anchorage area, and create a special dog court or a special juvenile court on the ballot. Can it happen? I suspect it could happen under those circumstances. It would be a unique case, but under this rule all Mr. Robertson is preventing is the creation of courts or defining their jurisdictions; that is, he is fearful that there might be popular press to establish a great number of courts as each individual popular problem arose, the public would decide

the way to solve it is to create a new court. If the divorce rate goes up they would feel a domestic relations court will automatically send it down; if juvenile delinquency increases, a juvenile court will solve the problem. I think that that is his concern, that is, the creation, jurisdictions, and multiplication of courts.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, the reason for the questions, I refer to Section 4 of the judicial article which says that the qualifications will be prescribed by law for other courts such as your justices of the peace, commissioners' courts, or such as that, and I am in question as to whether this amendment would refer to that.

MCLAUGHLIN: That definitely would not refer to Section 4 because this is a prohibition against creating courts or defining the jurisdiction, not defining the qualifications of the judges of those inferior courts. What this would attack -- what the initiative can reach -- Section 1, "courts established by law" that is, the initiative could create courts under Section 1, and could define the jurisdictions of those courts under Section 1, but it cannot touch the qualifications of the judges. That is left to the legislature, and very wisely so, because you don't know the availability of personnel under the circumstances. It is not intended to and obviously doesn't reach the qualifications of personnel.

PRESIDENT EGAN: Mr. White.

WHITE: If I may address a further question to Mr. McLaughlin, I am still getting a little more confused now, the further we go. This amendment would not prevent the passage of a law by the initiative which might say that, "No left-handed judges by the name of Jones shall be qualified to serve on the bench."?

MCLAUGHLIN: That would not prohibit it, Mr. White.

WHITE: Then I don't think it accomplishes Mr. Robertson's purpose.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: First of all, I might point out that special legislation would prohibit that, but I would like to ask Mr. McLaughlin whether it is not true that in Missouri the initiative was used to adopt what we call the Missouri Plan, the judicial plan, after the legislature would not change it.

PRESIDENT EGAN: Mr. McLaughlin could you answer that question?

MCLAUGHLIN: It is my understanding, in spite of Mr. McNealy,

it is my understanding that in fact in Missouri, the Missouri bar plan was not a concoction of the attorneys or the bar associations. It was something that was created by initiative by the people and it was actually intended to be a buffer against that Pendergast machine which Mr. McNealy insists it was a "pot of [word inaudible]"; that is, it was a defense weapon against a political machine and it was created by the initiative; and I think that that expert on constitutional law and on the Missouri court system, Mrs. Hermann, will concur with me on that statement.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: May I ask a question of Mr. Robertson? This is in the interest of the Style and Drafting Committee. Section 19 of the judiciary article says that, "The supreme court shall make and promulgate rules governing practice and procedure in all civil and criminal cases, which rules may be changed by the legislature only upon a two-thirds vote of the members elected to each house." In that case, that takes care of court rules doesn't it?

ROBERTSON: Yes.

NORDALE: So, if Style and Drafting decided that prescribing of the rules was unnecessary, we could remove it couldn't we?

UNIDENTIFIED DELEGATE: But don't do it. (Laughter)

ROBERTSON: I would have no objection to that, Mr. President. I inserted "and prescribe the rules thereof" largely at the suggestion of some of the delegates to me that it should include that. My original amendment was simply to exempt the creation of courts and defining their jurisdictions, but I think the rules are created by the supreme court and are subject to revision or amendment or repeal by a two-thirds vote of the majority members of the legislature under our present judiciary article.

NORDALE: And that is the only way they could be changed?

ROBERTSON: That is right.

HELLENTHAL: Point of information, Mr. President.

PRESIDENT EGAN: Mr. Hellenthal, your point of information.

HELLENTHAL: That only qualifies the word "legislature", or rather qualifies the word "two-thirds"; and I think Mrs. Nordale has read it incorrectly. It can be changed by the legislature but only upon a two-thirds vote. That is the way I understand it but the legislature can't change the rules. Therefore, Mr. Robertson's restrictions in the proposed amendment is very sound. I don't read that to mean that only the legislature, and

not through use of the initiative, may the rules be changed. It means only by a two-thirds vote; no other way, a two-thirds vote, but it doesn't mean the legislature to the exclusion of the initiative.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, we passed the judiciary article yesterday in third reading. It is now a part of the constitution as I understand it.

PRESIDENT EGAN: That is right, Mr. Johnson.

JOHNSON: And the section, as I read it, which has reference to rules, doesn't use the word "only". In fact, it says "shall make and promulgate rules", referring to the supreme court, "... shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts, which rules may be changed by the legislature by a two-thirds vote of the members elected to each house. There is no "only" in there.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I believe Mr. Hellenthal is right. I think it would be dangerous to leave out. The rules are not rules for fighting but they are as an important a part of the judicial system as the law itself, and if you have the rules that are subject --

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

TAYLOR: The rules are a very important part of our legal system of jurisprudence and I don't believe that anybody should have the right to change them unless it is the bar, the judicial commission, or the courts had a chance to explain to the persons who are going to change them what the importance is, so I don't believe you could do it under the initiative and referendum. I think all parts of the amendment as proposed by Mr. Robertson should be retained as it is for the protection of the people and the protection of the courts.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I am quite of the opinion that we are adding just ten extra words to the constitution here that really have little or no merit and I am still going to vote against this amendment unless I hear more arguments and better arguments to the contrary than I have heard.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: May I ask a question?

PRESIDENT EGAN: You may ask your question.

KILCHER: If I follow correctly, the article on the judiciary already specifically states that the rules only can be changed by the legislature. The word "law" was not used there for this specific purpose, wasn't it? It was one of the exceptions so that, I think, definitely takes care of the prescribing of the rules. This part of the amendment is unnecessary and redundant, if I am correct.

MCLAUGHLIN: Mr. Kilcher, I might answer, I think that has already been rather ably answered by a member of the Style and Drafting Committee; that if we determine in our ultimate wisdom that it is unnecessary it will be stricken out in Style and Drafting. And in my ultimate wisdom I am speaking only for one-ninth of that Committee. I think it is unnecessary and possibly it could be deleted more easily in Style and Drafting.

KILCHER: Now as to the two first demands of the amendment, creating courts and defining jurisdiction, Mr. McLaughlin, is it not your opinion that the major courts, the superior courts and the supreme court, are, as it is, already immune from the initiative?

MCLAUGHLIN: The supreme court is immune from the initiative; the supreme court is immune from the initiative except in its chief justices -- that is, if the supreme court requests an increase in judges and the legislature refuses to give it, you might be able to get the increase on a request of the supreme court through the initiative. In the superior court the number of judges, which would not affect the jurisdiction, could be changed by the initiative as it now stands.

KILCHER: Upon demand by the supreme court?

MCLAUGHLIN: No. It could be changed without the request of the supreme court. You will notice the word "immune ". Now you do have the possibility of an intermediate appellate court, between the supreme court and the superior court which could be created to take care of a tremendous increase in volume. That court's jurisdiction could, at the moment, be changed by the initiative.

KILCHER: Could it also be created by the initiative?

MCLAUGHLIN: As it reads here it could be created by the initiative. That is correct.

KILCHER: Thank you. One of the arguments, Mr. President, in favor of the amendment was that inferior courts, special courts, might be blindly, as it were, under the effect of mass hysteria,

demanded, but I think that the article on special legislation would take care of that. Any court, to take Mr. McLaughlin's words, a juvenile court or a dog court would be a special problem and I doubt very much that a special problem in a special area could get any backing under our present initiative rules from 10 per cent of all of the districts in Alaska. It is impossible so actually, practically, what the initiative would amount to if it were permitted to be used in connection with the judicial article is this: if a general need should arise in the state, a general need for a general type of inferior courts or possibly a superior court, a general need like was felt in Missouri to adopt an entire new system -- a system that, as Mr. McLaughlin says, we have to be thankful to the initiative, to its operating. If such a similar situation should arise I think we owe it to the initiative to grant it the right to function in these rare and historic moments. I do not see where the initiative could possibly, or would possibly, be abused for any special or local interests. It would be prohibited from being used for these purposes and I can't see where a whole state can get hysterical about a pack of dogs or a local juvenile problem and back up an initiative which is a lengthy process, a complicated process, and a process that is safeguarded with enough time, a long enough term for everybody to think it over coolly so I think this amendment is not necessary, I doubt if the initiative ever would be abused, and I see where it possibly could be put to good use and I oppose this amendment on that grounds. I think that anybody that believes truly in the initiative should agree and vote that amendment down.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I don't know whether I am for or against this amendment yet but I would hate to see it get so muddied up that we don't know what we are voting on and I wish that this Convention would understand for once and for all that whether or not it is an "idiot rule", we are operating under a motion adopted by this Convention that says when we say "by law" or "by the legislature", we now mean one and the same thing, so that any time those terms are used, they are currently subject to the initiative. If I am wrong I will stand corrected but that is my understanding of the motion that we are operating under and we keep getting that question muddied up and we shouldn't do it because it confuses the votes. To further clarify my own mind I would like, with the permission of the Chair, to address a question to Mr. Taylor. Mr. Taylor, as seconder of this motion, I would like to ask if in creating courts, defining the jurisdiction or prescribing the rules thereof, if that covers all the abuses that you feel might be made of the initiative in connection with the judiciary article. It seems to me that this amendment deals only with the creation of additional courts. It doesn't deal with such matters as "the number of judges shall be prescribed by law", "the

jurisdiction of the court shall be prescribed by law". It doesn't deal with any of those other matters in the judiciary article so as far as I am able to understand; it deals only with the question of the creation of new or additional courts.

TAYLOR: That is right, Mr. White, it doesn't. In regard to the creation of the courts and the jurisdiction -- the defining of the jurisdictions is quite technical and the rules thereof; the adoption of that amendment will clarify the issue. In the judiciary article they have put in "the changes as provided by law". Well, this way we want it so the law would be only the legislature and not through the initiative and referendum. There are other matters connected with the judiciary article that are not so important and if they were subject to the initiative, of which I am doubtful -- I don't agree with everything that Mr. McLaughlin says -- I doubt whether they would be applicable then, but this will take care of everything that I think we are particularly interested in.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Is this intended to read: "to create courts and define the jurisdiction thereof"? In other words "define the jurisdiction of courts created". Does it apply to the jurisdiction?

TAYLOR: It does not create the courts or define the jurisdiction thereof. They are prohibited or restricted from it.

PRESIDENT EGAN: Mr. Marston.

MARSTON: May I ask the Chairman of the Judiciary Committee, Mr. McLaughlin, a question? Did I understand you to say, Mr. McLaughlin, in your opinion as head of the Judiciary Committee, that Mr. Robertson has in the initiative and referendum right now the protection he requires under this amendment?

MCLAUGHLIN: Mr. Marston, you did not understand me as Chairman of the Judiciary Committee. When I speak, I speak personally. First of all, there seems to be an impression in this Convention that whenever you render an opinion, it has to be partisan and what I am trying to do is present both sides of the question in terms of my own emotions and my intended vote. I intend to vote for Mr. Robertson's amendment although I disagree with his opinion and Mr. Taylor's on the rule-making power.

MARSTON: You feel there is protection now?

MCLAUGHLIN: I feel no great emotional necessity for it.

MARSTON: I want to speak on this just a moment here before we get to it. I am not opposed to it and I told Mr. Taylor that but I am afraid we will go over the fence here and go into a

big hassle and I would like to avoid it. I have a feeling that they are going to try to destroy this whole thing pertaining to the courts and then somebody else steps in, and I have the opinion now that I am going to oppose the whole thing, but I'd like to go along with Mr. McLaughlin.

PRESIDENT EGAN: Mr. Nolan.

NOLAN: Mr. Marston, you realize that there has to be, under a suspension of the rules, any further amendments would take a two-thirds vote. I suggest for one amendment it would take a two-thirds vote to suspend the rules.

MARSTON: If I can get a stronger opinion here that there will be no more attempts here to destroy it, I will go along with it.

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

MCCUTCHEON: I don't think the delegate should endeavor to abridge the right of any other delegate here to present some other matter. After all, there are 55 delegates here and we all have various opinions, and it seems to me that anyone could present his opinion and we have to vote on the subject at issue.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: There are several questions to this article that refer to the judiciary article and I would like to get them clarified before voting so I move we recess until 1:30 p.m.

PRESIDENT EGAN: Mr. Coghill asks unanimous consent that the Convention recess until 1:30 p.m. Are there committee announcements? Mr. Smith.

SMITH: I would like to announce a meeting of the Committee on Resources at 12:50 in one of the rooms upstairs.

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: Engrossment and Enrollment at 1:00 o'clock.

PRESIDENT EGAN: Are there other announcements? Mr. Hellenenthal?

HELLENTHAL: There is a map in connection with the election districts which will be in Room 404 of the Mines Building between 1:00 p.m. and 4:00 p.m. this afternoon and if anyone has any questions or suggested change with regard to the election districts, we suggest they go there and talk to Ernie Wolfe or Bruce Thomas. Room 404 of the Mines Building. The reason we make that request is that they have detailed topographical maps there that show watershed boundaries and it is much easier

to answer any questions there than it would be here.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I would like to ask, Mr. Hellenthal, does that mean that they can change the boundaries there if they wish to?

HELLENTHAL: No, but they can answer any questions which you may have with regard to the application of the map to the written language as it has been distributed to each delegate.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I may give the added information that Mr. Thomas is from Livengood.

PRESIDENT EGAN: Mr. Thomas is from Cordova. If there is no objection, the Convention will be at recess until 1:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us Mr. Robertson's proposed amendment. The question is, "Shall the proposed amendment be adopted by the Convention?" All those in favor of adopting the proposed amendment -- the Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Page 3, Section 7, line 2, after the comma following the word 'appropriations' insert 'create courts, define the jurisdiction or prescribe the rules thereof,'."

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

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

Yeas: 39 - Awes, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Doogan, H. Fischer, Harris, Hellenthal, Hermann, Hinckel, Johnson, King, Laws, Lee, McCutcheon, McLaughlin, McNealy, Marston, Metcalf, Nerland, Nordale, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, White, Wien, Mr. President.

Nays: 10: Coghill, Emberg, V. Fischer, Gray, Hilscher, Kilcher, Knight, McNees, Peratrovich, VanderLeest.

Absent: 6 - Armstrong, Barr, Hurley, Londborg, Nolan, Walsh.

CHIEF CLERK: 39 yeas, 10 nays and 6 absent.

PRESIDENT EGAN: The "yeas" have it and the proposed amendment is ordered adopted. Are there other questions or proposed amendments for Article XI, the article on initiative and referendum? If not, there is no motion for advancement on the calendar. The proposal will be referred to the Rules Committee for assignment to the calendar. Mr. Doogan.

DOOGAN: Does that move it on into third reading now?

PRESIDENT EGAN: It does, Mr. Doogan. It will take its regular course and the Rules Committee will put it on the calendar in third reading. Mr. Sundborg.

SUNDBORG: Mr. President, I move and ask unanimous consent that the rules be suspended, that the article on initiative, referendum, and recall be advanced to third reading and final passage, be read by title only, and placed on final passage at this time.

PRESIDENT EGAN: Mr. Sundborg asks, moves and asks unanimous consent that the rules be suspended, that Article XI, the article on initiative, referendum and recall be considered engrossed and advanced to final passage. Is there objection?

WHITE: I object.

COOPER: I object.

PRESIDENT EGAN: Objection is heard. Is there a second to the motion?

TAYLOR: I'll second the motion.

PRESIDENT EGAN: Mr. Taylor seconds the motion. The question is, "Shall the rules be suspended and Article XI be advanced to third reading?" The Chief Clerk will call the roll.

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

Yeas: 40 - Armstrong, Awes, Boswell, Buckalew, Coghill, Collins, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Smith, Stewart, Sundborg, Taylor, VanderLeest, Walsh, Wien, Mr. President.

Nays: 13 - Cooper, V. Fischer, Hilscher, Johnson, Laws, Londborg, Metcalf, Poulsen, Reader, Robertson, Rosswog, Sweeney, White.

Absent: 2 - Barr, Nolan.)

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

PRESIDENT EGAN: So the rules have been suspended, Article XI is now before us in third reading and open for debate. The Chief Clerk will please read the article.

CHIEF CLERK: "Article XI, Initiative, Referendum and Recall. Section 1. The people may propose and enact laws by the initiative and approve or reject acts of the legislature by the referendum --

TAYLOR: Point of order. I think that the motion was that it be read by title only, in third reading.

PRESIDENT EGAN: That is right. Mr. Sundborg, did your motion include that?

SUNDBORG: That was part my motion, Mr. President.

PRESIDENT EGAN: That it be read by title only?

SUNDBORG: If that is in order.

PRESIDENT EGAN: Well, under the suspension of the rules that can be done, that is correct. If there is no objection then, the article is now before us and in third reading and open for debate. Does anyone wish to discuss the article on initiative, referendum and recall? Mr. Robertson.

ROBERTSON: I am constrained to vote against this article for the reasons I stated on the floor of the Convention when it was first introduced. I think we are doing a disservice to the people of Alaska in adopting an initiative and referendum instead of doing them a service, and I think it might have been well exemplified by the experience in California with initiative and referendum and also in the State of Washington. I also feel that the limit of the denial of certification alone to judicial review instead of both the allowance and the denial also makes the article very defective. I believe there will be many more cases of where the certificate in allowing it, than where it would be denied, because I can't believe the secretary of state is going to deny very many certificates; I think he'll constrain himself, or whoever passes upon them, to allow them. For that reason I advise and announce that I shall vote against the article.

PRESIDENT EGAN: Is there further debate? Mr. Sundborg.

SUNDBORG: Mr. President, I take a view opposite that from Mr. Robertson. I feel that it is a good article; it is well drawn. It gets away by its language from the abuses which did make

the initiative unsavory in some respects in California and some other states. I believe we have in here safeguards, both to the principle, and most of our legislation will be enacted by the legislature, and also the principle which I believe is equally sound, that the people, after all, are those who have the real say in what we should have as our laws. The point that Mr. Robertson makes about denial of certification is the only thing that will be subject to judicial review, I think is not an important one because the only thing that the secretary of state is called upon to certify anyway is whether the petition or the application is in proper form. He cannot certify as to its content; all he can say is that it has been presented correctly and therefore you may go out and get your signatures on a petition. If he should turn it down and say the form is not correct, then, that would be subject to judicial review and I think that is proper. I think it's a good article and I hope it will go into our constitution.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I think it's a good article; I think it's well written, if we feel that we must have initiative and referendum in the constitution. I personally am not in favor of including this article in the constitution. I don't think the initiative is actually a view of the people as a whole, of the individual Alaskan. Initiative lends itself only, almost exclusively, to use by pressure groups. The people who want good government go to the polls once; they elect their representatives. We have developed an excellent system of apportionment for our legislature. We will elect those people. The average Alaskan will vote for that person and they will have faith in him to enact the laws that he wants. The initiative will be a tool of pressure groups, such pressure groups as we have seen work upon this Convention. I don't think it will actually be in the interests of good government or of the people.

PRESIDENT EGAN: Mr. Marston.

MARSTON: I don't think at this time that sovereign people are going to abrogate their position as sovereign people. We are going to remain a sovereign people and the history of the initiative and referendum does not prove out what Delegate Fischer has just said; it has proven good more often than it has bad. The legislature makes good and bad laws; the initiative and referendum has done the same but it has better laws on the whole than the legislature has. I cannot see how this body can go against this initiative and referendum bill we have before us. We would be disheartening to the people who are supporting us here. They have accepted it and it is in the law now, or soon will be, and I believe we will put it in there. There are 40 mavericks in this organization here. I know Mr. Maverick of Texas, lives on an island and his cattle aren't branded, and I believe we are going to go through and take care of them.

Those "holy cows" we had this morning to protect on the Judiciary -- well, it is all right if we have to do that but there are 40 mavericks here who are regular cattle and they will go according to their own thinking and I believe we will have the initiative and referendum on the laws in the State of Alaska, and I sincerely hope so and I am going to vote for it.

DOOGAN: Mr. President, does it take a motion to adopt this as part of the constitution or is this up for final passage?

PRESIDENT EGAN: It is up for final passage and the roll will be called on it, on the question.

DOOGAN: I call for the question.

PRESIDENT EGAN: Mr. McCutcheon has been attempting to get the floor.

MCCUTCHEON: I move the previous question.

PRESIDENT EGAN: Delegate McCutcheon moves the previous question.

DOOGAN: I second it.

PRESIDENT EGAN: Seconded by Mr. Doogan. The question is, "Shall the previous question be ordered?" All those in favor of ordering the previous question will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the previous question is ordered. The question is, "Shall Article XI, the article on initiative, referendum and recall be adopted as a part of the Alaska state constitution? The Chief Clerk will call the roll.

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

Yeas: 43 - Armstrong, Awes, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Lee, McLaughlin, McNees, Marston, Metcalf, Nerland, Nordale, Peratrovich, Riley R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, White, Wien, Mr. President.

Nays: 10 - V. Fischer, Johnson, Laws, Londborg, McCutcheon, McNealy, Poulsen, Reader, Robertson, Walsh.

Absent: 2 - Barr, Nolan.)

CHIEF CLERK: 43 yeas, 10 nays and 2 absent.

PRESIDENT EGAN: So the "yeas" have it and Article XI, the

article on initiative, referendum and recall has become a part of Alaska's state constitution. Mr. Sundborg.

SUNDBORG: Mr. President, may we revert to the order of business of committee reports?

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

SUNDBORG: The Style and Drafting Committee has reviewed the work remaining to the Convention and we desire to report that by the action just taken we have up to this time adopted two articles for the constitution. They total 10 pages. When we total up all of the articles which have passed second reading, which I think is practically the entire body of the constitution, all of that constitutes 67 pages, so we have passed 10 out of a probable 67 or thereabouts, pages which will be in the constitution; that is speaking of the typed copies in the form in which we work on the proposals here. Now we have reported from Style and Drafting to the Convention one other article which is only two pages in length. We have in our Committee, about ready to report out, one additional article which will be six pages in length; but a great deal of work remains which our Committee hasn't even looked at yet or considered; a total of about seven articles comprising altogether something around 50 pages out of a total of 67 which will go into the constitution. I call this to your attention because I would like to ask that we again adopt a procedure such as we followed early in the Convention of holding only brief plenary sessions, at least for a few days, so that the Style and Drafting Committee can handle a great many of these proposals and get them in shape to bring to the floor, or else the floor will soon have nothing else to do, and until we do that there is no possible way of finishing up our work of drawing up the constitution and adopting these things in third reading.

PRESIDENT EGAN: Mr. Sundborg, if the Chair may, the Chair would like to suggest that perhaps the plenary session might yield to the Style and Drafting Committee to the extent that some part of the morning hours would be left open for a few days to the Style and Drafting Committee and we could continue on with our work in plenary session, if necessary, until late at night and through the afternoon; but if those morning hours could be left available to Style and Drafting it should give them time to work when they would be in a fresher mind. Mr. Hurley.

HURLEY: Mr. President, as an observation on that point, I think that most will agree with me that if we have less than two hours at any one time we are really wasting our time; not wasting it, but not as great an advantage as when we have a fairly long period of time. We get more done than when we have little periods of short time.

PRESIDENT EGAN: Well, Mr. Hurley, if the Chair is not being presumptuous, if for the next few days we would call our plenary session into session at 1:30 p.m., as we did earlier in the session for a considerable length of time, in order to attempt to accomplish this work, would that suggestion be in line with what the delegates might be thinking? Mrs. Hermann.

HERMANN: As a member of the Style and Drafting Committee and also the "nagging wife" of the Constitutional Convention, I wish to remind the Convention that the other committees had approximately five weeks of committee work at which time they were working most of the time during the day, the plenary sessions being very short both morning and evening. The volume of work that confronts Style and Drafting Committee at this time is, I would say, equal to that which confronted any of the other committees during the period that they were drafting the articles that they have. It is a different kind of work, it is true, but we can't accomplish what we have to do without liberal allowances of time between now and the end of this week; and it is my understanding that we have to complete this and have it ready to be made into a final document by the end of this week if we are going to accomplish all we have to do before final adjournment. I think we should have, certainly a five-or six-hour period daily at one time.

PRESIDENT EGAN: From 7:00 in the morning until 1:30 in the afternoon would be, wouldn't it?

HERMANN: It's broken up somewhat in that respect, and we worked yesterday from 1:00 o'clock until 7:00 o'clock with only a coffee break at 4:00 o'clock and we didn't accomplish what we had promised you, Mr. President, that we would, and which we honestly thought we could do. Now, we are going to have to speed up our work, there isn't any question about that either, but we need long periods of time to devote to this work for the next three or four days, at least, and I think we are entitled to it. I think we are entitled to the same break on this matter that the other committees had in preparing the original articles.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: As a member of the Style and Drafting Committee I agree with Mrs. Hermann. However, I feel that if we use the early hours of the day, say from 9:00 until 1:00 for the rest of this week, that in all probability we can catch up with the work that must be done and from my personal point of view that would be the better way of handling it. We still could get a bite to eat or something between 1:00 and 1:30, and if it is in order, Mr. President, I move that we adopt as a policy of this Convention that for the balance of this week our plenary sessions convene at 1:30 p.m.

PRESIDENT EGAN: Mr. Johnson moves, is there a second?

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HELLENTHAL: I second the motion.

PRESIDENT EGAN: Mr. Hellenthal seconds the motion. The question is -- Mr. Coghill?

COGHILL: Mr. Chairman, I have the bus schedule here and it might be well to look over what time the bus leaves town to the University, and there is a bus that leaves the depot at 12:30 and arrives here at 12:50, and also the next bus is at 2:30 and arrives here at 2:50. This 12:30 bus would be the one then that the delegates would wish to come out.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: If I may follow up that point of information, it occurred to me that the bus company has accommodated us up to now by furnishing a special bus daily and I am sure if we tell them we would rather have that special bus leave at 1:00 in the afternoon instead of at 8:30 in the morning, they would be glad to do that. There is a regular bus leaving each morning from the bus depot at 8:30 and the Style and Drafting Committee could use that one if it desires to hold its meetings out here instead of in the city.

PRESIDENT EGAN: Mr. Coghill, if this motion carries, will you see that the bus company is notified?

COGHILL: Yes.

PRESIDENT EGAN: Mr. Cooper.

COOPER: There is a motion before the house which is amendable, I believe, is it not? It is a motion to adopt a policy.

PRESIDENT EGAN: There is no reason why it shouldn't be amendable.

COOPER: With the consent of the mover of the motion, I would like to amend it to convene at 3:00 in the afternoon. The majority of the Style and Drafting that I have heard talk here have asked for at least six hours uninterrupted, and during that time there would be a lunch hour, and 3:00 in the afternoon would give us roughly six hours, less the dinner hour, before we had to be back in plenary session. I so move.

PRESIDENT EGAN: The motion didn't say that Style and Drafting would meet at 9:00, Mr. Cooper. They could meet earlier if they wished.

TAYLOR: For the benefit of the Style and Drafting Committee I might say there is a bus that leaves the depot at 7:30 a.m. and that would give them a chance to put in an hour or two extra.

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PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, the Johnson bus leaves at 8:30 a.m.

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

V. RIVERS: Mr. President, I would like to hear an expression from a majority of the members of Style and Drafting as to what would be the best suited to their purposes. It seems to me that we should more or less conform to what they feel would be the best way of carrying out this rather heavy load of work.

V. FISCHER: I move a two-minute recess.

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

RECESS

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

DOOGAN: May I have the privilege of the floor?

PRESIDENT EGAN: If there is no objection, Mr. Doogan, you may have the privilege of the floor.

(Mr. Doogan was given the privilege of the floor.)

PRESIDENT EGAN: The question is, "Shall it be the policy of the Convention for the next few days to meet in plenary session at 1:30 p.m.?" Mr. Hellenthal.

HELLENTHAL: Did Style and Drafting reach any decision or do they have any suggestions because I, too, want to be amenable to their wishes.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, we did have a meeting during the brief recess and it is agreeable to Style and Drafting Committee to proceed on that schedule, at least for the next few days until we see if it does give us enough time.

HELLENTHAL: What is the schedule?

SUNDBORG: The schedule would be that the plenary sessions would not meet until 1:30 o'clock daily and that Style and Drafting Committee would have the entire morning in which to work.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: May I address a question through the Chair to Mr. Sundborg?

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

TAYLOR: Mr. Sundborg, had you given thought about increasing the size of the Style and Drafting Committee and possibly breaking it up into three subcommittees so that you could turn out more work? There are a lot of committees that are not doing anything and have no work and possibly their services could be utilized, possibly four committees for that matter, and cut the time in half.

SUNDBORG: We have considered that. Our Committee is one of nine members which is one of the largest in the Convention. We have divided it into three subcommittees of three members each and we find that the greatest amount of time which we are taking is not taken in the subcommittees. They seem to run along pretty smoothly. It is when we get their reports before the full Style and Drafting Committee that we run into greater delays and I think delays which it is well that we have because it brings more minds to bear on the problems. I feel personally that if the size of the Committee was increased it would slow down the process rather than speed it up, at least in that process where we are considering the reports from the subcommittees. I believe it is working very well right now but you have to realize that we haven't had anything to work on until about a week ago and then we have had everything which we have to do in a period of about two weeks.

TAYLOR: Well, Mr. Sundborg, then in following your remarks out to a logical conclusion, if you cut the two of your subcommittees off, then you would still speed the work up more? Is that right?

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: I wouldn't want to cut the committees off. I think three subcommittees are about right number to handle the proposals that are before us but the thing that takes time is when all nine members come together to consider the report of the subcommittees. Yes, answering you very frankly, I think if we would cut the full committee down at that point to four or five members we would go faster but I don't think it would result in as good or as carefully considered language or parts of the constitution as we have been reporting. There is a lot more to this Style and Drafting than considering whether you say "but" or and or whether you put in a comma. We have had to go over the entire constitution and see that it is consistent in the manner in which it treats the times in which certain things are to happen and the expressions of how large a majority is required; for instance, we want to be sure the same language is used when the same thing is meant. Otherwise the constitution

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will be open to construction which was not intended by the body.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: If we should pass this motion for the first half of the day what will the members who are not serving on Style and Drafting be doing. Can anyone tell me that?

PRESIDENT EGAN: That would be up to them, Mr. Metcalf.

METCALF: Well, my friend, I am very guilty -- I feel very guilty in that case. As I said once before here a couple of weeks ago, I am apprehensive that we are not going to get done on this thing and I, for one, would like to volunteer, I think we should volunteer some of our help in some way or other to Style and Drafting to hurry up and expedite this thing, and at least have it done this week.

SUNDBORG: Mr. President, if I may comment on that, we have been through in Style and Drafting a long period of preparation for the work we are doing and it is preparation which has been in process ever since this Convention met. Style and Drafting has not been idle even though we have not had articles on which to work. We have been working up our policies and understandings and style determination, so all of which would be just "Greek" to many people who would be added to the Committee at this time and I am afraid it would take us more time to try and indoctrinate them and to get them abreast of what we are trying to do than we could possibly save for utilizing their talents.

PRESIDENT EGAN: The question is, "Shall the Convention make it a policy over the next few days of convening the plenary session at 1:30 o'clock p.m.?" All those in favor of the motion will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the motion has been adopted as the policy of the Convention. Mr. Sundborg.

SUNDBORG: Mr. President, also arising from our Style and Drafting Committee meeting held during recess, I would like to move that as for today that the Convention continue until approximately 5:30 p.m. This would be the policy and then adjourn at that time, until 1:30 tomorrow. In other words, have no night session tonight so that Style and Drafting could have the evening hours in which to work today.

PRESIDENT EGAN: Is there objection to the proposal as offered by Mr. Sundborg for the policy as of today and for today?

DOOGAN: I object.

SUNDBORG: I so move.

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PRESIDENT EGAN: Objection is heard. Mr. Sundborg so moves. Is there a second?

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers seconds the motion that it be the policy of the Convention for today to adjourn the session at 5:40 and convene again at 1:30 p.m. tomorrow. Mr. Buckalew.

BUCKALEW: Mr. President, who objected -- Mr. Davis?

PRESIDENT EGAN: Mr. Doogan. All those in favor of adopting Mr. Sundborg's motion as the policy of the Convention for today will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed motion has been adopted. Mrs. Sweeney.

SWEENEY: While we are still on committee reports I would like to report that your Committee on Engrossment and Enrollment, to whom was referred Committee Proposal No. 6/a, local government, has compared same with the original and find it correctly engrossed. The first enrolled copies will be placed on the delegates' desks within a short time. I ask unanimous consent for the adoption of the report.

PRESIDENT EGAN: Mrs. Sweeney asks unanimous consent that the report of the Committee on Engrossment and Enrollment be adopted. Is there objection? Hearing no objection, the report of the Committee on Engrossment and Enrollment is adopted. Mr. Taylor, the Chair notes that it is not 21 minutes after 8:00 p.m. but will we be able to take up Committee Proposal No. 16 which was held in abeyance, at this time?

TAYLOR: The one that was held in abeyance until 9:18? Yes, I will withdraw that.

PRESIDENT EGAN: We have before us Committee Proposal No. 16 and the proposed amendment as offered by Mr. Smith, which has been mimeographed and is on all the delegates' desks. Mr. Smith.

SMITH: Mr. President, I did not have an opportunity to attend the meeting of the Ordinance Committee today and I wonder if it would be permissible to ask the Chairman of that Committee if this matter was discussed at their meeting today.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President. The only discussion, Mr. Smith, was with just a portion of the Committee and there was nothing definite arrived at except that the Committee had considered earlier in the ordinances, why we had provided an ordinance there that the legislature might amend or supplement the

transitional provisions and there was some talk about then reinserting an article which we had taken out, or to offer it to the Convention, for in addition to merely the transitional measures, we would add to that particular ordinance there by amendment, as I said, for Convention consideration to provide that the legislature by a two-thirds majority of each house could make such an amendment comply with any constitutional provision. Now, that would be an argumentative matter in any event but while the Committee was divided on it, a portion felt that that would be a better proposition, in effect, to write out more or less a blank check. That was the only consideration given.

PRESIDENT EGAN: Thank you, Mr. McNealy. Mr. Smith.

SMITH: Mr. President, I gave this thing considerable thought last evening and I would like to call your attention to the provisions of House Resolution 2535 and especially to the contents of Section 203. Section 203 provides for the holding of a constitutional convention and it sets up the things which that convention shall do. We have referred to those things as the requirements as set forth by House Resolution 2535. Now there are only two questions involved here as I see it. One is, are we going to make this provision in our constitution now or are we going to wait and let Congress do it for us. One or the other I am certain is going to be done. I base that certainty on the report of the House Committee on Interior and Insular Affairs. In their action in considering the Hawaiian Constitution they set up the requirements of HR 2535 and along side of those requirements they set out the sections of the Hawaiian Constitution which met those requirements and I feel in my own mind that Congress will follow exactly that procedure in connection with our constitution when it comes up for approval. Now, I realize that this is merely an enabling bill. We don't know what the final act admitting Alaska as a state will say. However, this particular provision has been in every enabling act since 1950. Now I do not say that we must, of necessity, follow the exact language of this provision but I do feel that we must make the intent here very clear and I think the only safe way that we can do that is to follow the exact language of the enabling act. Therefore, I am convinced that the sensible thing to do is to approve this amendment as offered.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, this language has indeed, or a language similar to it, been in every enabling act since 1950 but there is one thing we have got to remember and it is the governing factor to me in this consideration and that is we are now in the process of drafting and we hope adopting a constitution prior to the passage of an enabling act. When this section as written into HR 2535 and other enabling acts, it was contemplated by the drafters of that act that the enabling act would be passed

first and then the people of Alaska would hold their Constitutional Convention, adopt their constitution and it would go to the Congress of the United States. That is exactly backwards from the way we are doing it now. Under the normal procedure, if you want to call it that, the enabling act is passed first and the people draft their constitution and then it goes to the voters for ratification. If the voters do not like the enabling act they turn down the constitution. There is provision, and there also has been in enabling acts for another constitutional convention then to be called; if the voters still don't like the enabling act, they turn down the second constitution. That is the end of the route. It goes without saying that when you read these enabling acts, that Congress can then have the option of writing a new enabling act or not. Now approaching this matter the way we are and writing and adopting our constitution first, we have, so far as I can find out, no check on any future enabling act except insofar as we provide those checks. Now, this particular section here, adopting paragraph 5 in the enabling act says, "All provisions in the Act admitting Alaska to the Union which reserve rights or powers to the United States as well as those prescribed in the terms and conditions of the grants of lands or other property made to Alaska are consented to fully by the State of Alaska and its people." Now of all of the hundreds of people I have talked to about the terms of HR 2535, I can count on something less than one hand those who like the requirement that the state will have to retain title to its minerals and may only lease them. Our answer to them as delegates to the Convention, as members of the Resources Committee or any other Committee, has only been able to be one answer and that is that it's in the enabling act that we can provide for any future change that might take place but we can't change the enabling act unless Congress does. But I think we would be ill-advised to write in here -- this section -- saying that we consent fully to those terms. Of course we may eventually have to; we may eventually want to, but I think that by leaving this out we are going to put ourselves in the same situation Hawaii got into when they left it out and I don't know that they didn't leave it out deliberately and Congress came back at them, has come back at them, in the terms of their new enabling act and said to the people of Hawaii, "You must now amend your constitution to put this section in," but that is a simple procedure. The enabling act for Hawaii, title 1 of this bill, merely provides on page 12 that this particular article be put to the people at the same time they go to the polls to elect their governor. If they adopt it the constitution is automatically amended and if they don't adopt it, "the provisions of this Act thereupon cease to be effective." In other words, the people of Hawaii by leaving this very section out have the final say-so on whether or not they want to adopt an enabling act that may be passed sometime in the future, the terms thereof they know not at present.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, yesterday the proposed Section 2 in the committee report said that the State of Alaska and its people consent to, all and singular, the provisions of the enabling act as it may be passed by Congress. That was a blank check, to be sure; we didn't like that so we struck it. We now come to a proposal for a new Section 2. That new Section 2 is limited only to saying that we would agree in advance to such terms or conditions regarding the grants of lands or property made to the state. Now we are only talking about that we consent in advance to the terms and conditions regarding the grants of lands. Well now, Congress is going to allow us a certain amount of land. Maybe it will be a 100 million acres. There is no reason to think that the amount of land that they are agreeing to allow the new state is going to be reduced in the future Congress. It has come up every time with each successive enabling bill. I think we have to put in something tantamount to Mr. Smith's proposal as a new Section 2. Otherwise, we are not eligible to have an enabling act put through Congress. Congress says, "Very well," to Hawaii, "You can have a referendum here that will pass upon the question of whether you consent to our terms and conditions or not," but the thing is I can't get it clearly through my head that Congress is going to pass the enabling act until the people of Hawaii have expressed themselves at the referendum, and how do the people of Hawaii know how much Congress is going to amend their act after they have rendered their consent by referendum. In other words, they won't give us an enabling law until you have consented in advance so we might just as well consent in advance here because this is not an unreasonable request on the part of Congress. They are asking us only to consent only to the terms and the conditions of the grants of land which will be made to the new state. I don't want to see us get into a "pickle"; I don't want to see this thing delayed by Congress pointing out that you people haven't complied, because here in the new enabling bill now we have got something the same as we had in the previous enabling bill, you people had it called to your attention -- you had fair warning that that would probably be in there, and you have chosen to disregard it. Then we are at the mercy of Congress to spell into an enabling act an authorization to have a referendum which would be regarded as an amendment to our constitution. We might get ourselves in the position of having to call another constitutional convention in order to make up for this deficiency. So, I firmly believe in this particular amendment offered by Mr. Smith. I have this to say though: I was trying to interpret Mr. McNealy's reservations about forever being bound by such consent. Did you have in mind, Mr. McNealy, that we would follow this language up as proposed by Mr. Smith by saying something to this effect, "subject only to changes as are subsequently authorized by Congress", in case Congress later liberalizes the restrictions?

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President. No, that wasn't the thought behind it. The only thought we had was if this body saw fit to trust the legislature by a two-thirds majority vote of both houses to comply with some requirement of the enabling act. We were referring only to the state legislature.

R. RIVERS: Well, how could there be one until we had an election?

MCNEALY: The Territorial legislature -- it refers to the Territorial legislature.

R. RIVERS: The Territorial legislature -- oh, I see. Well that would be something to consider. I understand that now, but I also say that it might be well to add "subject only to such changes as are subsequently authorized by Congress". May I ask Mr. Smith a question?

PRESIDENT EGAN: You may.

R. RIVERS: Mr. Smith, what is your reaction to that?

PRESIDENT EGAN: Mr. Smith.

SMITH: Well, Mr. Rivers, again I would say that I hesitate to argue a point of law, constitutional law if you want to call it that, but in this reservation of power I feel certain in my own mind that Congress can only deny us those powers which are denied to other states. When a state is admitted to the Union, it is admitted on an equal footing with the other states, and Congress, with all its power, cannot deny us any rights which are granted to the other states, so I don't think that the addition is necessary.

R. RIVERS: I am afraid you didn't get the point. Now a consent under certain conditions might be regarded as forever binding. If, 10 years after that we are a state, Congress wishes to liberalize the restrictions regarding the lands that is turned over to us, then we would take advantage of that liberalization, would we not? Do you think now that it is more palatable to the people here if they are consenting to the conditions laid down by Congress subject only to such --

MCCUTCHEON: Point of order, Mr. President.

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

MCCUTCHEON: Is Mr. Rivers arguing an amendment to this proposal?

R. RIVERS: Well, I assume under the guise of a question I might be leading up to introducing an amendment. I perhaps wandered a little. It may be that that is implied. Some of

the others can comment on that. It suits me the way it is.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I don't know whether you are laughing at me or what, Mr. President. If you are, I will take exception to it. (Laughter)

PRESIDENT EGAN: Mr. Buckalew, you have the floor.

BUCKALEW: Thank you, Mr. President. I think we are being unnecessarily cautious on this and I have heard the expression, "We are giving Congress a blank check". Well, I don't think that is really an accurate statement of the position we find ourselves in now. We haven't got anything. We have got an appointed governor and we have a Territorial legislature. Now I can't see that we have got anything in our credit balance. We can't lose anything by consenting to this. It is certainly going to be better than what we have got now and it seems to me that it would be better to go ahead and accept statehood and I think that we are going to get better bills as we go along anyway, and if there is something that is not exactly satisfactory to us we will have two United States Senators down there in Washington which would certainly be more effective than the people back here saying, "Well, there is one provision in this act that we really don't think is just quite right." Now, I would rather adopt an amendment and trust it to our senators, and Congress is confined by the Constitution in certain fields and if they came out with a wholly inequitable bill I am sure that our delegates and our Tennessee senators under the Tennessee Plan would certainly raise an objection.

MCCUTCHEON: I move the previous question.

METCALF: I second the motion.

PRESIDENT EGAN: Mr. McCutcheon moves the previous question. Mr. Metcalf seconds the motion. The question is, "Shall the previous question be ordered?" Mr. Barr.

BARR: Mr. President, I thought it was said here that it was our policy not to cut off debate.

PRESIDENT EGAN: Anyone can move the previous question at any the Chair has no jurisdiction over that. The question is "Shall the previous question be ordered?" All those in favor of ordering the previous question will signify by saying "aye", all opposed by "no". The Chief Clerk will call the roll. The Convention will come to order.

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

Yeas: 27 - Awes, Buckalew, Collins, Cross, Doogan,

H. Fischer, V. Fischer, Gray, Harris, Hilscher, Hinckel, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nolan, Nordale, Peratrovich, Reader, Riley, R. Rivers, Taylor, VanderLeest.

Nays: 27 - Armstrong, Barr, Boswell, Coghill, Cooper, Davis, Emberg, Hellenthal, Hermann, Johnson, Kilcher, King, Laws, McNealy, Nerland, Poulsen, V. Rivers, Robertson, Rosswog, Smith Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 1 - Hurley.)

CHIEF CLERK: 27 yeas, 27 nays and 1 absent.

PRESIDENT EGAN: So the "yeas" have it and the previous question has been ordered.

CHIEF CLERK: It's a tie.

PRESIDENT EGAN: What was it?

CHIEF CLERK: 27 to 27.

PRESIDENT EGAN: Oh. Then the "nays" have it and the previous question has not been ordered. Mr. Victor Rivers.

V. RIVERS: It seems to me, I, for one, want to state that this question had inevitably tied itself up with the so-called Tennessee Plan which we listened to last night. It seems to me, if we are going to view ourselves as a state, we must have this general clause in the constitution before we can do so. I have read the wording of the enabling act, HR 2535 and the enabling act of the proposed Section 2 and they are identical and they do reserve merely the rights that Congress reserves to itself and we agree to the land grants and the reservations in regard to the lands that Congress makes. Those two things, as Mr. Smith has pointed out, the first one is bound up by the Bill of Rights and by the Constitution of the United States and the second one is entirely within the jurisdiction and the judgment of Congress and I am sure that that judgment is not going to alter appreciably at any time in regard to what the final enabling act consists of. It seems to me that we would do well to consider that if we adopt this amendment in its present form that we are in a position then to go ahead with such a plan, if we so decide, as the Tennessee Plan. If we do not, it would also seem to me that we are thereby not in a position to consider ourselves a full state upon the election of our senators and the establishment of our state government, so therefore I favor the amendment.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I am in favor of the amendment, also. Your Committee on Ordinances is considering right now and has under preparation another section to be added to Proposal 17 which we think will take care of the situation somewhat along the lines that Mr. Ralph Rivers mentioned awhile ago, that differences that will arise between the new enabling act and the one we have used here as a pattern can probably be amended in a satisfactory way and so I move again the previous question on this present amendment.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, this is an extremely critical and serious matter we are discussing here and I don't think we should limit ourselves too severely in the debate. It would make good sense if the house resolution which has been quoted here were the act admitting Alaska to the union, but we have no assurance whatever that it will be, or the act which does admit Alaska to the union or will resemble that in any particular. What does the proposed amendment say? It has some conditions in lines 2, 3, and 4, but what it says is expressed pretty well in the first line and last. It says, "All provisions of the act admitting Alaska are consented to fully by the State of Alaska and the people."

UNIDENTIFIED DELEGATE: No, no.

SUNDBORG: All right, the lines in between say "which reserves rights or powers to the United States." I don't want to give that up, as well as those prescribing the terms or conditions of the grants of lands or other property made to Alaska. I don't want to give those up without having a look at them. I think that if we adopt this amendment we are indeed signing a blank check and I think the whole problem could be taken care of in another way which would meet both the requirements of Congress and would show the good sense, which I think Alaskans should show whenever they are entering into another form of government. Now I think the whole thing can be taken care of in a transitional measure which would permit the people of Alaska at the polls to adopt such differences as there might be between what is expressed in our constitution and what is required by the Congress in the act which finally admits Alaska. I wonder if I may have consent to read what I would suggest might be included in such a transition measure and which I think would meet the entire problem.

MCCUTCHEON: I object.

PRESIDENT EGAN: Objection is heard.

MCCUTCHEON: Are we speaking to the point of the amendment

here? We are speaking either on the adoption or denial of this amendment.

PRESIDENT EGAN: Objection is heard, Mr. Sundborg.

SUNDBORG: Then Mr. President, I offer an amendment to the amendment.

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

CHIEF CLERK: "Strike the language of the proposed amendment and substitute the following: 'Section 2. Provisions of the act admitting Alaska to the Union which should require consent by the people of Alaska to any condition, or inclusion in the state constitution of any language, not expressed in this constitution shall be presented for ratification at the first general election at which a governor is chosen. If ratified, such provisions shall be incorporated in this constitution as though they were an original part hereof.'"

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

PRESIDENT EGAN: Mr. Sundborg moves the adoption of the proposed amendment to the amendment.

HERMANN: A point of order.

PRESIDENT EGAN: Your point of order, Mrs. Hermann.

HERMANN: Since the proposed amendment completely destroys the sense of the original amendment, hence it is not acceptable.

PRESIDENT EGAN: The Convention will be at recess for one minute.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mrs. Hermann your point of order is well taken. The proposed amendment to the amendment is not in order at this time. Mr. Hellenthal.

HELLENTHAL: I asked that we hold this over until today because I wanted to study it and I have studied it and I am entirely satisfied with this amendment. I don't share Mr. Ralph Rivers worries because Congress can remedy the situation and when we become one of the sovereign states we will be able to present our grievances to Congress like any other state and we must abide by their decision. We can't dictate the terms of our admission, we just can't do it. We are not a sovereign state like Texas was. Texas did it but they were sovereign and they got away with it but there was some question about whether they

could even get away with it but since we are not sovereign to start with we just can't dictate the terms and I feel that this is a proper amendment and I therefore support it upon reflection.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: May I ask Mr. Hellenenthal a question?

PRESIDENT EGAN: If there is no objection.

HINCKEL: What if the proposals of the enabling act were entirely out of line and they were so bad we just couldn't accept them, what would be the procedure then? I know that when we go to explain to the public why we put this in, we'll have to have a logical answer and I don't have one right now.

HELLENTHAL: One, I am sure, would be this, Congress wouldn't provide probably for ratification of the enabling act by the people. Another way of showing our disapproval would be failure to organize the state government. There are many, many ways that the disapproval could be recognized and I am sure Congress wouldn't want to shove sovereignty down our throats, and there will probably be some provision for ratification of the enabling act, but better still, they will adopt our constitution without any reservations.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I recognize that there are several advantages in including this amendment; advantages working toward statehood, but I just can't bring myself to vote for it. Mr. Buckalew said there is no reason why we shouldn't write a blank check since we have nothing in the bank. Well, I will grant you that we have nothing in material things. We have no land or anything of that sort to lose but we do have rights as American citizens and if we voluntarily give up all those rights then we are bankrupt. Now I don't know whether the inclusion of this would do harm or good. It depends on the enabling act, of course. For those of you who want to vote for it I will say it might do some good in that when President Eisenhower sees it, he might remove his objections to statehood because then he could make a military reservation of everything north of the Yukon. It removes all of our objections to that, and it might advance the cause of statehood. We might get statehood four or five years sooner that way but my conscience just won't let me vote for it.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: It occurs to me that HR 2535 is still before the Congress. I don't believe it was killed last session. As I recall it, it was referred back to a committee, so it is still,

so far as this session goes, a live piece of legislation and might continue in that respect throughout the balance of this session. At least it might be subject to further consideration. Now if we are going to pursue the so-called Tennessee Plan, and should we go ahead with that type of operation then if we go to the Congress with a constitution that has in it this provision as covered by Mr. White's amendment, or rather Mr. Smith's amendment, then it seems to me that we would stand a better chance of having our constitution adopted because we are then in conformity with the enabling act as it is now pending in the Congress and which could very well be acted on at that time. So I believe that the amendment is good and ought to be passed.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, in answering Mr. Hinckel's question in part, I had some of the same reservations that he had. In looking further into it and reading the report of the Interior and Insular Committee in the House, that is report No. 80 on this particular enabling act in the hearings they had, this enabling act has been built up through a series of studies extending over a period of some 20 years and on that committee in the House we have men like Engle, Sisk, Saylor, and a number of others. Some of the letters which you read last night, we have our watchdogs there in Congress. In the Senate we have men like Knowland, Neuberger; men like Magnuson, Clinton Anderson, Earle Clements, Murray from Kentucky, others like that. They are not going to go back through all the stages and reverse this picture of development of this enabling act. I can see there might be some minor revisions but I cannot see any major upset to SB 50 and HR 2535 essentially as they now are before the Congress. I would venture to say that with only minor or slight revisions, if and when we get statehood, this or even a better enabling act will be what will pass the Congress.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Mr. President, I agree almost wholeheartedly with what Mr. Rivers just said. I also recognize the reservations in the minds of many of the members on this floor. I approached Mr. Smith here a few minutes ago with regard to a certain suggestion and I am going to throw it out on the floor now for its merits, whatever it might have. If this were to be modified, striking the words "of the Act" in the first line and inserting "of acts to date of this constitution" what that might do to it in appeasing the various members on the floor and still not hurting the value of the article. In the house bills and senate bills to date there has been a certain pattern set up. Practically all of these provisions have appeared in every statehood bill within recent years. Furthermore, our constitution will be a dated article. I am not going to spend any more time talking

about it but it does seem to be a possible loophole that might give us a near unanimous consent.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: We seem to have proceeded in many of our debates here on the assumption that we can't trust people. That assumption has gone through every argument we have had. It has been checkmating the legislature, the executive power, this, that, or the other thing. We all stand here as American citizens. We sometimes refer to ourselves as "second-class" citizens but I don't like that term because I believe we have chosen to stay here in the Territory, and if we don't like it, we can get out; but on the other hand, if we trust these men who will vote for statehood, then let us trust that under these words they will give us the best possible type of provisions. I believe we will show trust, we will be saying to these men that we want statehood, not on any terms but on the best terms we know you will provide for us. And, Mr. President, I don't feel this is a blank check. I feel that, if we go ahead as I feel we will, for the Tennessee Plan to send our senators and representative there, we have this provision. We will not only be knocking on the door, we will be ready to walk in when the door is opened and I for one will support this.

PRESIDENT EGAN: Mr. Smith.

SMITH: I believe I have the right to close unless someone else --

PRESIDENT EGAN: Mr. Smith, you have the right to close.

SMITH: I don't have a great deal to add but I would ask each of you to ask yourselves this question. With all the difficulties that we have faced in persuading Congress to vote in favor of statehood, can anyone doubt that if we do not like the enabling act that we could persuade enough Congressmen to vote against statehood? I have no such doubt. I don't think I will go further into the technical questions involved except to point out one thing: that the land grants as provided in this act when it is finally passed will be a contract between the United States and the state. They will continue in effect regardless of any act by either party or the other without the consent. In other words, it would have to be by mutual consent before the terms of those land grants could be changed in any way.

PRESIDENT EGAN: Mr. Coghill.

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

PRESIDENT EGAN: Mr. Smith closed the argument. If there is no objection, you may ask your question.

COGHILL: There is one thing I would like to get clarified here in this amendment that you propose, Mr. Smith. Do you propose that the people of Alaska consent fully to a partitioning plan?

SMITH: I do not. I think that that situation is taken care of very well in our boundary provisions. If Congress decided to divide Alaska our boundary provision would no longer apply. There would be a direct conflict between our constitution and the enabling act and if the people of Alaska refused to ratify an amendment to the constitution, to bring that boundary provision in to line with the enabling act, then I am sure that we would not be granted statehood on a partial basis.

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

V. RIVERS: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 46 - Armstrong, Awes, Boswell, Buckalew, Collins, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, Kilcher, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, Walsh, White, Wien, Mr. President.

Nays: 7 - Barr, Coghill, Cooper, King, McNealy, Sundborg, Sweeney.

Absent: 2 - Hurley, VanderLeest.)

CHIEF CLERK: 46 yeas, 7 nays and 2 absent.

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

WHITE: May I rise to a point of personal privilege?

PRESIDENT EGAN: If there is no objection, you may have the floor on personal privilege.

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

PRESIDENT EGAN: Mr. White serves notice that he will reconsider his vote on the proposed amendment just voted upon. Under those

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conditions we just might as well forget this proposal until tomorrow.

JOHNSON: A point of order.

PRESIDENT EGAN: Your point of order, Mr. Johnson?

JOHNSON: Is Mr. White's notice of reconsideration good while he has the floor on personal privilege?

PRESIDENT EGAN: He should have stated that his point of personal privilege had expired before he served notice. The Chair assumes that that was his intention. Is that correct Mr. White?

WHITE: Yes.

PRESIDENT EGAN: Is there objection? Mr. Taylor.

TAYLOR: Mr. President, I move that the rules be suspended and that Mr. White's notice for reconsideration be brought on at this time.

PRESIDENT EGAN: Mr. Taylor moves that the rules be suspended and that we consider Mr. White's reconsideration at this time. Is there a second to the motion?

METCALF: Second it.

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

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

Yeas: 17 - Collins, H. Fischer, Hinckel, Knight, Lee, McCutcheon, McLaughlin, McNees, Metcalf, Nerland, Peratrovich, Poulsen, Reader, V. Rivers, Taylor, Walsh, Mr. President.

Nays: 36 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Johnson, Kilcher, King, Laws, Londborg, McNealy, Marston, Nolan, Nordale, Riley, R. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, White, Wien.

Absent: 2 - Hurley, VanderLeest.)

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

PRESIDENT EGAN: So the "nays" have it and the proposed motion

has failed of adoption. We have before us Committee Proposal No. 17. Mr. McNealy.

MCNEALY: Mr. President, a point of inquiry. I am not sure of the method which to follow here but due to the fact that at the time the ordinances from Section 2 to Section 20 were drawn, none of the proposals had passed the house in final form, and some changes had been made. In going over it, the consultants with the Committee, felt that there should be some definite changes and the Committee also felt that it should apply and not in any way conflict with the proposals that have already advanced through second reading on the floor, and for that reason and in order not to lose the time of the Convention, we placed upon the desk Proposal No. 17/a which contains Section 2 and Section 20 of the Committee's proposed ordinances. Now these are incorporated in ours, word for word, with those in Proposal No. 17/a. If you have some kind of a rule so these could be submitted at this time and the others held in abeyance until we complete our work on them tonight, these Sections 2 and 20 are ready, which cover the state capital and fish traps.

PRESIDENT EGAN: In other words. Mr. McNealy, you are asking that Committee Proposal No. 17/a be brought before the Convention at this time and Committee Proposal No. 17 be held in abeyance? Is that right?

MCNEALY: Yes, Mr. President. I would ask unanimous consent.

PRESIDENT EGAN: You ask unanimous consent that you submit to the floor of the Convention for second reading of Committee Proposal No. 17/a? Is that correct? Mr. Buckalew.

BUCKALEW: Could I ask Mr. McNealy a question? Don't we want the proposal that is on the desk now withdrawn? If we hold it in abeyance we are never going to bring it up.

MCNEALY: Mr. President, in answer to Mr. Buckalew I will say that until we find out what our final draft of the other is, I would prefer to wait and withdraw it tomorrow.

PRESIDENT EGAN: Is there objection to the introduction of Committee Proposal No. 17/a at this time? Hearing no objection the proposal will be accepted by the Convention. The Chief Clerk may read Committee Proposal No. 17/a.

CHIEF CLERK: "Committee Proposal No. 17/a, introduced by the Committee on Ordinances and Transitional Measures, resolved that the following be agreed upon as part of the Alaska State Constitution: SCHEDULE."

UNIDENTIFIED DELEGATE: Is this the first reading?

PRESIDENT EGAN: It is, yes. Do you ask unanimous consent that we proceed with the second reading at this time, Mr. McNealy?

MCNEALY: Mr. President, I do ask unanimous consent that the rules be suspended and Committee Proposal No. 17/a be advanced to second reading.

PRESIDENT EGAN: Is there objection? If not, the Chief Clerk may read --

ROBERTSON: I want to ask a question first. Why did they leave out Section 19 of the Proposal No. 17?

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

RECESS

PRESIDENT EGAN: The Convention will come to order. If there is no objection Committee Proposal No. 17/a will be read for the second time. Is there objection? The Chief Clerk may proceed with the second reading of Committee Proposal No. 17/a.

(The Chief Clerk then read Committee Proposal No. 17/a for the second time.)

PRESIDENT EGAN: Are there amendments to Section No. 2? The Sergeant at arms may bring proposed amendments up to the Secretary's desk. The Chief Clerk may read the proposed amendment (from Mr. Hurley).

CHIEF CLERK: "Section 2, line 2, page 1, change 'Juneau' to 'Palmer'."

HURLEY: Mr. President, I move the adoption of the proposed amendment.

PRESIDENT EGAN: The Convention will come to order. Is there a second to the proposed amendment?

MCCUTCHEON: I'll second it.

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

HURLEY: Mr. President, I do this in all seriousness, recognizing the many ramifications of the problem. I would like, however, to take a few minutes of the delegates' time to explain my reasons for introducing this motion and urge your serious consideration to it. The matter of a capital city of a state is an extremely important decision, one that basically should be geared to the economy of that state, one that must be

considered in the light of present circumstances as well as future circumstances. I think that, in all sincerity, Palmer is an ideal location for the capital of Alaska. It is centrally located insofar as area and present population is concerned and it would appear within our knowledge in projecting population that it will continue to be relatively near the center of population as our great State of Alaska continues to grow. I call attention to the fact that it is accessible by all means of transportation with the possible exception of water. We have rail service; we have excellent paved highway service; we have an airport capable of handling DC-3's, and within a very short time will be served by a scheduled airline. It is presently the center of many important governmental administrative agencies. They have made the decision purely on a basis of saving administrative costs and placing their personnel in the center of the area within which they work. Four of the federal government agencies and two of the Territorial agencies have headquarters in Palmer. I call attention to the conclusion that as our state grows we will follow the tendency of more and more cooperative efforts with the federal government. To that extent I feel the location of our state capital at Palmer will result in a greater liaison and cooperative work with the federal government. I call attention to a matter which I think is extremely important. At the present time and in the foreseeable future it is one of the two areas of our Territory which can be self-supporting. We may, in the event of being cut off from supplies from other parts of the United States, have to forego some luxuries but our population would be able to subsist in a very satisfactory manner with the foodstuffs and materials that we can produce right in the area. I call attention to the fact that it is probably an average climate for the Territory of Alaska. We have available the cheapest fuel in the Territory of Alaska per unit of heat. We have, even at the present time and are improving all along, excellent community facilities in the way of schools and hospitals. In all respects in my mind, it has the advantages which are desirable for the location of a seat of government for a state which has the future that I feel that Alaska has. Now I certainly recognize the many problems inherent with such a move but I feel that the facts will demonstrate that where the capital is located in the State of Alaska it will stay, and the dollars and cents that enter into the argument must be computed on a longtime basis. I am sure that the savings to the State of Alaska and to the people of the State of Alaska as a result of having the capital located in Palmer will far offset the immediate and temporary loss that may accrue to those people whose businesses presently depend upon the capital being in Juneau. I also think that another consideration which I have given much thought to, I know, is the matter of ratification of this constitution. Certainly I put that ahead of any personal feelings, but after a thorough consideration I am convinced that the constitution will be ratified with a substantial vote should my amendment be adopted, as it would be without. I recognize that there are

people who will vote against the ratification if this matter is included. But I also feel that as many people will vote in favor of ratification with my amendment adopted, as would vote against it if the amendment was not adopted. I ask the delegates to consider this matter in a long-term way. If you do not, you are not making the proper decision for your state. We have gone through this Convention in the days that we have been here in what I think is a wonderful manner of cooperation and putting aside of local interests, and I hope that you will not feel I introduced this amendment purely as a local interest matter, granted, of course it involves local interest, but yet I think it is more important that we consider the matter from a long-term basis. So keep that in mind and whatever decision we arrive at will be the proper one, just as it has in the case of considering other proposals. I ask that you give my amendment your most serious consideration.

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

V. FISCHER: Mr. President, I would like to ask a question.

PRESIDENT EGAN: If there is no objection.

V. FISCHER: Of the Chairman of the Ordinance Committee. What does it mean when we include the statement, "The capital of the State of Alaska shall be at Palmer," or Juneau or wherever it may be? Does that mean it cannot be changed, it can never be changed? How could it be changed?

MCNEALY: Mr. Fischer, the question is a good one and in all fairness should be brought before the Convention in regard to its legal implications. The schedule or ordinances are simply transitional measures and the definitions of them by the courts are that they only serve the purpose of putting a constitution in operation of a change from Territorial government to a state government and once that has been accomplished to the fullest extent, then any of the ordinances underneath this schedule are no longer to be considered as laws. If you want to put it frankly and openly here, it would leave it in this respect: after the state became a government, under the ordinance here it would be possible to change the capital by method of the legislature or it would even be open to the initiative and referendum. The Committee considered a number of proposals there, and considered them very thoroughly, and this was certainly a committee compromise.

V. RIVERS: I would also like to ask a question. It says nothing about this being an ordinance. It says Committee Proposal No. 17/a, "That the following be agreed upon as part of the Alaska State Constitution". Where is any qualifying clause that sets this up as an ordinance in this?

MCNEALY: Mr. President, you will notice the asterisks there.

It leaves out Section 1 and we also leave out the wording. There is a preamble to the schedule which is in the schedule which is in Committee Proposal No. 17 that will be withdrawn, but it will head this article at the time when it is finally all before us and, in effect, no inconvenience may result because of change from a territorial to a state form of government. It is "declared and ordained" and the reason for the use of that language was because it is language recognized by the courts in interpreting ordinances under the schedule.

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

COGHILL: Mr. President, I feel compelled to rise and speak against this amendment. I feel this is more or less just like the apportionment act and a lot of other things that when we have to draw a fine line, and I believe that Juneau was well-established within the Territorial departments. We have got several million dollars worth of the property down there that would be turned over to us. I think that if the amendment for Palmer should be adopted, why it should then be amended that Nenana or Fairbanks or Kodiak or anyplace else would get it. I think we have got to draw the line that we have established in the Territory a capital and that it should stay there.

PRESIDENT EGAN: Mr. White.

WHITE: May I direct a question to the Chairman of the Committee?

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

WHITE: Mr. McNealy, you once set before us Committee Proposal No. 4 and I note that your report on Committee Proposal No. 4 that it was considered and rejected in favor of other handling of the capital in the schedule. Committee Proposal No. 4 in the outline provided that the seat of government should be Juneau until or unless changed as provided in Committee Proposal No. 4, and then the proposal went on to set up a study of the public advantages that might accrue from different locations and then to submit the locations chosen by such a committee to a vote of the people. I wonder if you could give us a little of the background of the Committee thinking in withdrawing that committee proposal and substituting the one we now have before us.

MCNEALY: Mr. President, there was a division of thinking, of course, as there is in all committees on that particular committee proposal. Even as a member of the Committee, we were not satisfied with this one here but it was the nearest thing that we could arrive at to get any degree of unanimity, and it was felt that the actual talk in the Committee and the feeling was and I believe the members when it appeared before

the Committee, if we spelled it out, there definitely had to be a referendum within a period of 10 years, that it would be spelled out there so plainly the feeling would be, especially of the property owners and others in Juneau and in the Southeastern area, that they wouldn't have any measure of security except on a 10-year basis and I grant again, being frank, that there isn't any guarantee of security in this. The only guarantee of security is if this were in the body of the constitution, which of course then could still be reached by constitutional amendment. But to answer your question, the major reason was that they felt that if it were spelled out or required an initiative that there would be a stalemate at the capital city and everybody would say, "What is going to happen in 10 years," because it is there in the constitution for them to read.

PRESIDENT EGAN: If there is no objection the Convention will be at recess until 3:50.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us the amendment as proposed by Mr. Hurley. Mr. Taylor.

TAYLOR: I have an amendment to Mr. Hurley's amendment on the desk.

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

CHIEF CLERK: "After the word 'Palmer' strike period and insert the words: 'whenever the town of Palmer shall be able to provide a capitol building and other facilities comparable with the facilities and buildings available at Juneau.'"

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor, the Chair would have to hold the amendment is a facetious amendment and is not germane to the question.

TAYLOR: Mr. Chairman, that is not a facetious amendment at all. Juneau has the facilities and I thought that Palmer should offer the same facilities if they expect to be the capital.

PRESIDENT EGAN: The Chair will still hold that the amendment to the amendment is not in order. The question is, "Shall the proposed amendment as offered by Mr. Hurley be adopted by the Convention?" Mr. Hurley.

HURLEY: 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: 12 - Davis, H. Fischer, Harris, Hurley, Kilcher, Laws, Londborg, McCutcheon, Poulsen, Reader, V. Rivers, White.

Nays: 40 - Armstrong, Awes, Barr, Boswell, Coghill, Collins, Cooper, Cross, Doogan, Emberg, V. Fischer, Gray, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Lee, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Riley, R. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, Wien, Mr. President.

Absent: 3 - Buckalew, McLaughlin, VanderLeest.)

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

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

MCNEES: I have an amendment, Mr. President.

PRESIDENT EGAN: Mr. McNees, you may submit your amendment to the Chief Clerk.

R. RIVERS: I have one on the Clerk's desk and would like to have it follow Mr. McNees's.

PRESIDENT EGAN: If there is no objection, Mr. Ralph Rivers. The Chief Clerk may read the proposed amendment as proposed by Mr. McNees.

CHIEF CLERK: "Strike Section 2."

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

MCNEES: I move the adoption of the amendment.

MARSTON: I second it.

PRESIDENT EGAN: It has been moved by Mr. McNees, seconded by Mr. Marston. Mr. McNees.

MCNEES: Well, it is felt that this is again a matter of legislative law even though many times it is written into constitutions, so is much legislation. Furthermore I feel that many of the allayed fears of the people who feel that the capital should remain in Juneau, should be alleviated by this expression or this amendment inasmuch as it would not call for moving it. I think the capital should remain at Juneau. I think it would remain at Juneau under this provision. I do not

feel that we can seriously, from an economic standpoint, consider moving the capital but neither do I feel that we should tie ourselves to definitely retaining it as a part of the constitution.

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

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

SUNDBORG: Your suggestion would be that we have this nowhere in the constitution? Neither in the body thereof nor in an ordinance?

MCNEES: I feel that is the way it should be.

SUNDBORG: You feel that the matter could be taken care of by, as you say, legislative law?

MCNEES: If necessary. I don't see that it would require even legislative action.

SUNDBORG: That the legislature could?

MCNEES: I think so, yes.

SUNDBORG: Where would the first legislature meet?

MCNEES: I would say definitely in Juneau.

SUNDBORG: How would that be provided? How would they know that?

MCNEES: By custom.

SUNDBORG: By custom they just --

HURLEY: Mr. President, point of order.

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

HURLEY: I think we should address the Chair before we proceed.

SUNDBORG: Excuse me, Mr. President. Those are all the questions I have for Mr. McNees.

PRESIDENT EGAN: Is there further discussion of this proposed amendment? Mr. Victor Rivers.

V. RIVERS: I think that this matter of the capital has been long in the minds of many people. It is a very important one to all of Alaska. To my way of thinking it should not be treated lightly, with levity. I know it is serious with all of us. I think practically everyone has a fairly strong conviction

in their minds but I believe that eventually the location of the capital should be left to the majority vote of the people after a reasonable interim for studies to be made and proper consideration to be given. I don't believe that in the essence the legislative and executive removal from Juneau would do the things that they say it would do in upsetting their economy. They have the physical plant and equipment there and they would doubtless be the service area and the government headquarters for the services rendered in the First Division, as is now Anchorage and Fairbanks in the areas in which they are located. I don't see a major upset in the economy of Juneau if the legislative and executive departments of government moved out. Now last February I visited in Olympia, Washington, I visited in Oregon, the Oregon State capital and in Seattle and Portland. In Olympia and in Salem they have very little activity of government. If you want to go where the activities of government are the state highway offices, the BPR, public health offices, welfare offices, you go to Seattle or Spokane in Washington. You go to Portland or one of the eastern cities such as La Grande in Oregon. Now it seems to me that the center of the executive and legislative being forever established in Juneau would be a grave injustice to all the people of Alaska, because there is doubtless coming a day in the not too distant future when this whole vast area of the interior of Alaska might well have a heavy population. They are entitled to be able to attend the meetings of the legislature; to have ready access to the governor; they are entitled also to have ready access to the policy-making departments of government, and it has been the experience of a great many people in Alaska that with Juneau as the capital, that has not been the case. We all realize that the economy of Alaska grew up first along our shorelands and our waterways. We had a maritime economy and for that reason the coastal areas are the oldest in development. But it has only been in recent times since roads, railroads, and airfields have opened the interior, and in that time it has begun to grow and it is growing, and growing rapidly. I, for one, do not feel that an immediate change should be made from Juneau but for them to tell me that if this constitution sets up a referendum or sets up a location by popular vote to decide on the capital after all the facts are known does not to me make sense. This matter of the location of the capital has been discussed, and has been the subject of considerable comment and understanding on the part of a lot of people for a long time. I sat in one legislature in which we decided that we would build through the Territory in different locations certain government buildings that were badly needed in the centers of these service areas. There were to be buildings located at Fairbanks, Anchorage, possibly Nome, and also in Southeastern. We appropriated \$600,000 which was basic money for what is now the Territorial Building in Juneau. It said that at first in that bill that was presented to the legislature, it first said that the building which was to be built would be located west of the Gulf of Alaska. After the bill was finally amended and adjusted the \$600,000 appropriated was spent on the Territorial Building at Juneau. I have sat through many occasions in Juneau when I realized the grave disadvantages of having it for a

capital. First and foremost is the difficulty in access and travel; secondly, of course, is the fact that it has very limited area in which to build and expand; thirdly, of course, is the fact that it is responsive more to the voice of the Fifth Division than any other part of Alaska. We have had a great deal of difficulty in getting the voice of the people of Alaska as a whole heard in Juneau as the capital. Now, those are things I think are basic in the consideration of all of our people. I have seen government agencies located in Juneau that spend more for travel than they spend for the actual cost of operating their offices. I refer to the FHA which had a very limited amount of capital operations in the First Division, very small amount of building under Title 608 of the FHA Act, and they were paying out \$64,000 a year to transport their people back and forth to the areas where they were doing 90 per cent of their building -- the Fairbanks and Anchorage areas, the Central Alaska areas. They were paying out more for that travel than they were paying out for the actual cost of operating their entire office per year in Juneau. Now we have similar patterns and parallels in such organizations as the Alaska Road Commission. The Alaska Road Commission has its main offices and its design engineering and supervisory staff in Juneau. They have no functions to perform in or around Juneau or in or around the First Division. Roads in the First Division are built by the Bureau of Public Roads and are maintained by them as they are in all national parks and all national forest areas, but there we have sitting a fairly large organization doing the planning, doing the engineering, doing the supervising of an organization which does practically all of its work throughout the balance of Alaska. Now that travel expense alone and that added cost of getting to and from their work, the work which they must necessarily perform, is a great one every year. I don't know what it is now; I know what it was in earlier years; and it was a great expense. They are far away from the actual work which they design and which they supervise. Those things are all considerations that any good study group should give in arriving at a future location for the site of Alaska. If this proposal fails I intend to submit an amendment or submit a proposal to take its place that will allow for a referendum by the people in a certain period of time, will provide for the legislature to make suitable studies of the most possible or likely sites in the Territory of Alaska, upon which a majority of the people voting on the question can then decide where the capital shall be. I can see that in our government, as government goes these days, the big function of government is the services which have an actual field function. It is not the sitting of the legislature and the chief executive, it is the services that are performed in building highways, operating schools, health and welfare. Even though the actual legislative and executive seat of the capital is

moved from one spot to another it does not necessarily disrupt that flow of activity of government in the area which is being served by those services. Where they have a field service, the field service supervision must necessarily be close to it. I point out to you that there are extremes in this matter of moving the capital. I think it is the State of North Carolina that has, by popular vote, moved their capital 14 times. However, that is an exception; it does not ordinarily happen. Once it is established as it was done in the national government, in an undeveloped area somewhere near the center of population at that time, they selected Washington, D. C., employed a planner named Major L'Enfant, a French city planner, and from that he developed the outline of the city of Washington, and it is largely as we see it today. The plan has not been deviated from. That has been the selection of a capital of the nation of the United States. It was not picked in Philadelphia because Philadelphia happened to be at that time the seat of the government as we set up our national government. So I say, therefore, it is my opinion that this is a matter to which all of the people should eventually have a voice and that we here should not foreclose them from having such a voice.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I fail to see any basis for all the fears that Mr. Victor Rivers has expressed because, as has been pointed out, this Section 2 which is now sought to be stricken is a part of the schedule, and if I understand it correctly, and understand Mr. McNealy's explanation correctly, the very first state legislature that meets could either change the capital from Juneau to some other place or do anything it saw fit to do with regard to the capital. I can see no reason at all why the matter should be stricken. Certainly there is just as much argument in support of Juneau as the capital because on the standpoint of expense alone it seems to me that the new State of Alaska is going to need all of the money we will have for other purposes.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I was the one before who asked Mr. McNealy about the possibility of changing the site of the capital if it is included in the schedule as now worded. I have looked into it a little bit more and I don't want to question the authenticity of Mr. McNealy's opinion but the point is that it is an opinion. In Section 8 of Schedule 17 you will find the following phraseology: "Until otherwise provided by" law the seal of the Territory shall be the seal of the State. In other words we say, we qualify this fact that the seal of the Territory shall be the seal of the state by saying "until otherwise provided by law". The thing is that each one of these provisions stands by itself. We have a provision for citizenship of the state; that provision cannot be changed by

the legislature if the legislature wanted to change it. I am beginning to have very grave doubts as to whether we could change the capital if it's provided in here as currently proposed in Section 2 unless we have a qualification similar to that in Section 8 "until otherwise provided by law" or "until otherwise provided by vote of the people of Alaska at a referendum". It seems to me that we have no right to tie ourselves down and freeze the location in one particular place. I voted against Mr. Hurley's motion before because I didn't feel I could sit here and say Palmer is the proper place. I couldn't vote to put it in Anchorage or Fairbanks or Glennallen -- Glennallen, by the way, if anybody bothers to study the map of Alaska, is located in the exact center of Alaska if you split Alaska, taking Tongass in the South and Point Hope in the Northwest. Be that as it may, I think that we can't freeze the location because there are cost factors involved, as Mr. Rivers brought out, and I certainly will not vote to sustain the provision as we now have it in Section 2, and I am in favor of Mr. McNees's motion.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I find myself in this situation, and I started to say something about it before. I don't completely agree with Mr. McNealy. I think his basic statement was probably an accurate statement of the law. In my opinion there is extreme danger that this language would permanently fix the capital at Juneau, looking at this section of the schedule with other sections of the schedule and looking at the language itself, I think that in all fairness to the delegates here that it would be safer and wiser to meet the question head-on and insert such language as suggested by Mr. Fischer. Since I have been at this Convention, one expert says it's temporary; another expert says it's permanent; and another expert says, "I really don't know but it could be this or that", and in view of some of the cases I have read I think it would be safer to specifically provide either by law or by referendum or whatever is the desire of the people here assembled. But I will say that I think Mr. McNealy is probably right but I think the way it is drawn now that the courts would sort of waver between first one way and then another and if we might have a judge from the city of Juneau he might find more strength in the decisions that would hold that this would be a permanent provision.

MCNEALY: Mr. President, any statements that I make in regard to the law are not my own opinion. I have heard opinions of both legal and laymen on this floor handled very loosely and for that reason any statement I make is not an opinion, it is the law. Now I have no objection, particularly, to Mr. Buckalew's suggestion. There is no pride of authorship in the majority of articles that are going to be offered here on this schedule because we have lifted the language or backed it up by

court decisions. Now, in reference to the statement there in regard to law and the state seal was lifted out of another constitution, verbatim, so to speak, as to the statement that I made, it would only take but a couple of minutes if I could read this to the body in the case of Mann v. Osborne --

MCCUTCHEON: A point of order, Mr. President.

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

MCCUTCHEON: I fail to see how Mr. McNealy's comments at this particular time are justifying the contention that we should either adopt or deny the adoption of the amendment before us. Mr. McNealy is justifying an opinion which has been given, others challenged it. Consequently, it has no point.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. McNealy, why should we retain this Section 2 as you have stated it here in this article?

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, it should be retained, first, that there be a seat of government named in the constitution as mentioned here, so the legislature will at least know where to have a place to meet, and with reference to the fact here as to its permanency and to answer the objections for which I understand this amendment was offered to strike this section, I will read from a leading case, Mann v. Osborne (S.C. Oklahoma) page 48, "Ordinances and schedules appended to a constitution as distinguished from the permanent and fundamental law embodied in the constitution itself are temporary enactments for the purpose of effecting a transition from the old government to the new and of putting the provisions of the new constitution into effect." At the heading of this final schedule will be these words, "In order that no inconvenience may result," the words are substantially this, "by reason of the changes out of the adoption of the new constitution, it is the custom to adopt a schedule which will set forth temporary regulations covering the interim before the new machinery of government is thoroughly established. The only office of a schedule is to provide for the transition from the old to the new government and to obviate confusion which would otherwise arise during the transition period and this fact may be material in determining the construction and effect to be given to the provisions contained in the schedule." I submit that all of the answers are supplied in the committee proposal here; that the words that it offers will meet the tests of the courts in deciding on this particular point.

PRESIDENT EGAN: Mr. King.

KING: I would like to rise to correct what I think is a misstatement of facts. I admire Delegate Rivers very much when he talks about the jurisdiction of the BPR and ARC, and where their jurisdiction is. I live in a district where the ARC does all the road building, Skagway is also in the same district. The area in which I live is 45 minutes by air from Juneau and much of the Road Commission equipment and everything goes through the area from which I come. I think we should be very careful about stating facts when we are talking about something as serious as this.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, a point of information. Under national law, road building in national parks and national forests is done by moneys of and operated under the Bureau of Public Roads.

PRESIDENT EGAN: Mr. Emberg.

EMBERG: I would like to ask a question through the Chair of anyone who cares to answer it. It is my understanding that right now Juneau is the legal capital of the Territory, that the laws will carry over unless they are changed. Automatically Juneau is and will be unless we change it here, the capital of the state so I can't see there is any difference between whether we retain this language or not, provided that this language is subject to legislative action, because that is what the other course would lead us to, too.

PRESIDENT EGAN: What Mr. Emberg is asking is, does anyone have a positive answer as to whether or not the seat of government would still be at Juneau until changed by an act of the legislature if this Section 2 were deleted from this proposal? Mr. McNees.

MCNEES: I can answer to this degree, that there have been other states who, in their constitutions, have not named a capital of Alaska and the perpetuation has gone on.

PRESIDENT EGAN: The Convention will come to order.

MCNEALY: I believe, if memory serves me correctly, the Territorial capital is named at Juneau through the Organic Act which is a law of Congress and a law of the United States rather than the law of the Territory.

PRESIDENT EGAN: Does anyone wish to answer the question as asked by Mr. Emberg or does anyone have the answer? Mr. Ralph Rivers.

R. RIVERS: Mr. President, I think Mr. McNealy pointed to the answer and that being federally enacted and part of the Organic

Act, which is going out of existence, there could be a question as to whether it carries over or not.

UNIDENTIFIED DELEGATE: Question.

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

CHIEF CLERK: "Strike Section 2."

PRESIDENT EGAN: The Chief Clerk will call the roll. The Convention will come to order.

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

Yeas: 9 - Cross, V. Fischer, Hurley, Kilcher, Laws, McNees, Poulsen, V. Rivers, White.

Nays: 44 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Davis, Doogan, Emberg, H. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNealy, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Reader, Riley, R. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, Wien, Mr. President.

Absent: 2 - Marston, VanderLeest.)

CHIEF CLERK: 9 yeas, 44 nays and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments? Mr. Kilcher.

KILCHER: Mr. President, I have an amendment.

PRESIDENT EGAN: Mr. Kilcher, the President had assured Mr. Ralph Rivers that his amendment would be read next. Mr. Kilcher.

KILCHER: I wonder if it is in order to assign seniority to amendments?

PRESIDENT EGAN: Mr. Kilcher, what had happened was when the President recognized Mr. McNees's amendment, Mr. Ralph Rivers already had an amendment on the desk and at that time asked if we would recognize his amendment next.

KILCHER: Very often there are a lot of amendments on the desk.

PRESIDENT EGAN: Mr. Kilcher, if you raise the question, you have the floor and are recognized, your amendment will be read next here.

V. RIVERS: May we have a five-minute recess?

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chair would like to ask the Chairman of the Committee if these proposed amendments have been cleared with the Committee or have been brought to the attention of the Committee as provided by the rules.

MCNEALY: The only one I had seen is the proposed amendment by Mr. Rivers shown to me as Chairman of the Committee and not to the Committee.

PRESIDENT EGAN: Does the Committee itself have any amendments it would like to offer with relation to this section before we get into it?

MCNEALY: The Committee has no amendments.

PRESIDENT EGAN: Does the Committee object to hearing amendments?

MCNEALY: We have no objections.

PRESIDENT EGAN: Mr. Kilcher, do you wish that your amendment be read at this time? You have the floor.

KILCHER: Yes.

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

CHIEF CLERK: "Section 2, line 2, change the period to comma and add 'unless decided otherwise by law.'"

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

KILCHER: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Kilcher moves the adoption of the proposed amendment. Is there a second?

POULSEN: I second the motion.

PRESIDENT EGAN: Mr. Poulsen seconds the amendment. Mr. Kilcher.

KILCHER: Mr. President, there seems to be some doubts and it certainly might create trouble in the future if we leave Section 2 as it is. It might well be that it would take court action to decide whether or not the capital could be changed by simple legislative action or not. This small addition, I think, would remove any possible doubt, trouble, and expense, and would be in accordance with other transitional measures like the one where the seal is involved, and I therefore think that the adoption of this amendment would clear the air and satisfy all contending factions in the issue.

PRESIDENT EGAN: Is there further discussion? If not, the question is, "Shall the proposed amendment as offered by Mr. Kilcher -- " Mr. Sundborg?

SUNDBORG: May we have it read again, please?

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

CHIEF CLERK: "Section 2, line 2, change the period to comma and add 'unless decided otherwise by law'."

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

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

Yeas: 20 - Collins, Cross, Davis, H. Fischer, V. Fischer, Hellenthal, Hurley, Kilcher, Londborg, McNees, Poulsen, Reader, R. Rivers, V. Rivers, Rosswog, Smith, Walsh, White, Wien, Mr. President.

Nays: 31 - Armstrong, Awes, Barr, Boswell, Cooper, Doogan, Emberg, Gray, Harris, Hermann, Hilscher, Hinckel, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Riley, Robertson, Stewart, Sundborg, Sweeney, Taylor.

Absent: 4 - Buckalew, Coghill, Marston, VanderLeest.)

CHIEF CLERK: 20 yeas, 31 nays and 4 absent.

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

R. RIVERS: I will now offer the one I had on the desk.

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

CHIEF CLERK: "Section 2. Strike the section and substitute the following: 'Unless otherwise determined as hereinafter set forth the capital of the State of Alaska shall be at Juneau. Within five years from the admittance of Alaska as a State of the Union, the legislature shall establish a capital site survey commission to study the merits and demerits of potentially suitable sites for the permanent capital in line with the best interest of the people of the whole state, to be followed by a report to the legislature and to the public; and a referendum by the people at a statewide election or series of elimination elections until a majority of the voters voting on the proposition have concurred on a particular site, after which the seat of government shall be changed as rapidly as feasible to the new site.'"

PRESIDENT EGAN: Mr. Ralph Rivers, what is your pleasure?

R. RIVERS: I move the adoption of that amendment.

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

HINCKEL: I second the motion.

PRESIDENT EGAN: Mr. Hinckel seconds the motion. The motion is open for discussion. Mr. Ralph Rivers.

R. RIVERS: Mr. President, that speaks pretty well for itself, subject to its being improved by Style and Drafting. I wrote that out; it's clear; it needs better sentence construction. It would still leave it to the legislature to set up a commission. There is nothing said about how long that commission would take to make the study and report back to the legislature and the public. After the report is in, then, of course, the legislature would be relied upon to set up suitable referendum procedure and either at a particular referendum or series of referendums at which through an elimination process, you would finally get a majority for a particular site. Now the people wouldn't be voting in the dark. They would be cognizant of the report as to the location of the various sites; their closeness to the centers of population; their accessibility by rail, or train, or air, or both, or road. They would know something about whether the foundation ground was adequate for big buildings; what the water supply was; what the weather was like, and all that sort of thing. Now you just can't pick a site out. You might pick a site out in the dead center of population and find its on permafrost or glacier that you couldn't put buildings on. In other words, a site study commission would have a big job to do, operating within certain general criteria of where they might think the capital should be, and then you have got something before the people. You are leaving it in the hands of the people of Alaska as a whole to make a determination, which would take quite a few years, but which would be an orderly

approach to a solution of the problem. I am also cognizant of the fact that there might be some delay after the referendum, as to what the word "feasible" would mean. "Feasible" would take into consideration the financial condition of the state, the cost of new construction, what bonding would be required, and other considerations that would be taken into account not to disrupt the orderly processes of government, so I think that as a sound approach for the present Constitutional Convention to take, subject to a little style and drafting, that they could well adopt the approach and policy which is contained in this proposed amendment.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. President, I am against that amendment mainly because it is too long. I think the same thing could be said in a few words, that a referendum be provided in a certain number of years and that all of the legislation that happens to be in that amendment could be taken care of very well by the legislature and not be in the constitution.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I move to change the number from five to two.

PRESIDENT EGAN: Mr. Hurley moves the adoption of the proposed amendment. The amendment is quite long.

V. RIVERS: I will ask unanimous consent that we allow that to be mimeographed so we can see it more clearly before us.

PRESIDENT EGAN: If there is no objection the proposed amendment will be ordered mimeographed.

V. FISCHER: May I ask Mr. Ralph Rivers a question?

PRESIDENT EGAN: You may ask the question, Mr. Fischer.

V. FISCHER: Would you possibly like to withdraw this and rewrite it and have that mimeographed for introduction tomorrow.

R. RIVERS: Is Style and Drafting going to meet for a little bit this evening?

PRESIDENT EGAN: Mr. Cross has been attempting to get the floor. Mr. Cross.

CROSS: Mr. President, I would like to say that that proposal that is now before us is very similar to the one that was unanimously adopted by the Committee on Resolutions. Our resolution was somewhat longer than the one that is proposed there and also the time element is longer. Otherwise it is practically

the same thing as we arrived at after several weeks of study.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent that the amendment be held in abeyance until after it is mimeographed and available for all of the delegates. Is there objection? Mr. Gray.

GRAY: I would like to speak on a point of personal privilege.

PRESIDENT EGAN: If there is no objection, Mr. Gray, you may have the floor.

(At this point, Mr. Gray spoke for a few moments on a point of personal privilege during which Mr. Victor Rivers rose to a point of order that a delegate cannot debate under personal privilege.)

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

RECESS

PRESIDENT EGAN: The Convention will come to order. Objection was heard to the unanimous request to have the amendment mimeographed. Mr. Robertson.

ROBERTSON: I wasn't speaking on Mr. Rivers' unanimous consent request.

R. RIVERS: I so move.

PRESIDENT EGAN: Mr. Ralph Rivers moves that the proposed amendment be held in abeyance until it is mimeographed and placed on each delegate's desk. The question is, "Shall the Convention adopt the motion as offered by Mr. Ralph Rivers?" All those in favor of adopting the motion of having the proposed amendment mimeographed before it is again brought before the Convention will signify by saying "aye"; all opposed by saying "no". The "noes" seem to have it. Mr. Hurley.

HURLEY: Point of order. As I understood that, the question was whether this thing would be mimeographed or not. Did everybody understand the same?

PRESIDENT EGAN: That is right.

HURLEY: Mr. Victor Rivers stated that motion, not Mr. Ralph Rivers.

R. RIVERS: Mr. Chairman, Mr. Victor Rivers asked for unanimous consent and never followed it up.

PRESIDENT EGAN: Mr. Ralph Rivers made the motion, that is

correct. The decision was that the "nays" have it. Mr. Fischer.

V. FISCHER: Mr. President, point of order. We have a rule, do we not, that any long amendments be mimeographed?

PRESIDENT EGAN: Mr. Fischer, you are correct, and it would take, then a voice vote and a two-thirds majority to vote down such a motion. However, under the rule it would be possible for the Chair to just simply state that it be mimeographed, but the Chair does not know if this particular amendment is long enough that it should be mimeographed. The Chief Clerk will call the roll on the question of having this particular amendment mimeographed. Mr. Sundborg.

SUNDBORG: Is suspension of the rules debatable?

PRESIDENT EGAN: Suspension of the rules would not be debatable.

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

Yeas: 15 - Barr, Boswell, Cross, Doogan, Gray, Lee, Londborg, McLaughlin, Nerland, Nordale, Poulsen, Reader, Riley, Smith, Walsh.

Nays: 37 - Armstrong, Awes, Coghill, Collins, Cooper, Davis, Emberg, H. Fischer, V. Fischer, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Laws, McCutcheon, McNealy, McNees, Metcalf, Nolan, Peratrovich, R. Rivers, V. Rivers, Robertson, Rosswog, Stewart, Sundborg, Sweeney, Taylor, White, Wien, Mr. President.

Absent: 2 - Marston, VanderLeest.

Abstaining: 1 - Buckalew.)

JOHNSON: Point of order, Mr. President.

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

JOHNSON: Before the result is announced, as I understood the question it was a suspension of the rules, but in the matter of requiring that it would be mimeographed, does that require a suspension of the rules?

PRESIDENT EGAN: The Chair will have to admit, Mr. Johnson, that there has been a slight error made here in putting of the motion as it were. The Chief Clerk may read the results.

R. RIVERS: I want to change my vote to "no".

3034

DOOGAN: I will change my vote to "yes".

SWEENEY: I change my vote to "no".

ROSSWOG: I change my vote to "no".

WHITE: I want to change my vote to "no", I think.

PRESIDENT EGAN: The Convention will come to order.

V. FISCHER: I change my vote to "no".

MCCUTCHEON: I change my vote to "no".

GRAY: I change my vote to "yes".

HURLEY: I change my vote to "no".

HARRIS: I change my vote to "no".

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

BARR: I move we rescind our action on the vote just taken.

PRESIDENT EGAN: That would not be in order until the Chief Clerk reads the result of the vote; then it would. The Convention will come to order. The Chair will admit that it's the President's fault that we are in this predicament.

CHIEF CLERK: 15 yeas, 37 nays, 2 absent and 1 abstaining.

PRESIDENT EGAN: So the "nays" have it -- but what is the result of the vote? The Convention will come to order. Mr. Barr.

BARR: I ask unanimous consent that we rescind action on the vote just taken.

PRESIDENT.EGAN: Mr. Barr asks unanimous consent that we rescind the action just taken.

PERATROVICH: I rise to a point of order.

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

PERATROVICH: I believe that the motion is out of order because you can still reach that on reconsideration.

PRESIDENT EGAN: You are correct, Mr. Peratrovich. It is out of order at this time because it could be reached by the motion to reconsider. Mr. Ralph Rivers.

R. RIVERS: The "no" votes, I voted wrong thinking we were voting on whether we could send it to the boiler room or not,

then it occurred to me that we were voting to suspend the rules, so I changed my vote to "no", as far as suspending the rules is concerned; then the various other delegates saw the light and also voted not to suspend the rules. Now I contend that the 37 is a vote for not suspending the rules.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The motion has failed of adoption and the Chair will refer the amendment to the boiler room for mimeographing, under the rule that we have as one of our permanent rules. Mr. Robertson?

ROBERTSON: Is it in order to speak to the amendment now? To speak on the amendment?

PRESIDENT EGAN: The amendment is referred, Mr. Robertson.

ROBERTSON: I would like to speak on personal privilege for a minute.

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

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

PRESIDENT EGAN: The amendment of Mr. Ralph Rivers is on its way to the boiler room for mimeographing and will be placed on each delegate's desk. Mr. Harris.

HARRIS: Mr. President, at this time I would like to file a notice of reconsideration on the amendment that was made by Mr. Kilcher adding the words "as provided by law" after the period on line 2.

PRESIDENT EGAN: Mr. Harris serves a notice of reconsideration of his vote on the amendment that had been offered by Mr. Kilcher. That would hold Section 2 before us until tomorrow. Mr. McNealy, do you have a statement to make relative to the section that appears as Section 20 in this proposal as Chairman of the Committee?

MCNEALY: Mr. President, there is only one statement. The Committee, if I remember, the vote was five to four in the affirmative of reporting this out on the floor in this particular item. I believe I speak pretty well for all of the Committee. I don't believe there are any that are opposed to the abolishment of fish traps but the minority had some qualms about the language in it. In view of the fact that I voted on the minority I would like to have Mr. Buckalew, who spent a great deal of time on this, I would like to have him make any explanations that he could.

BUCKALEW: Mr. President, this particular proposal came into

life when we got a proposal from Delegate Lee. He had submitted a proposal and it eventually got to the Ordinance Committee and we prepared this particular proposal. Mr. McNealy stated once that it was Buckalew's proposal; that was inaccurate because it is a committee proposal. The purpose of this particular provision is to abolish fish traps the instant we become a state, and the proposal has the effect of taking care of that void period in the transition between the time the governor takes his seat and the legislature gets around to acting on the particular subject. It is not a part of the body of the constitution; it is strictly a transitional measure and that is the reason that you find it in the schedule. Now it was the feeling of the majority of the Committee that the trap question was of such prime importance that the state should make every effort to abolish the traps as soon as possible. It is common knowledge that there is economic distress among the individual fishermen in Alaska and Douglas McKay, our present Secretary of the Interior, has so admitted in his latest proposal on the fish trap problem. Now this ordinance will, as I say, have the effect of abolishing traps the minute we become a state. Now I think it is a proper transitional measure for the reason that it will take care of that interim period, and it depends upon when we are admitted. It might be that the traps will be able to operate at least 20 days after we were admitted to statehood and I am sure that none of the delegates would be in favor of such a mishap as that. Now it serves many purposes. One of the collateral purposes that it serves, I don't know whether all the delegates are familiar with the latest letter that McKay sent down here, or the latest fish trap legislation that is now pending in Congress. Now in the information he put out to the congressmen, his bill provides for an elimination of the fish traps over a 10-year period and in the statement of his case he says that the people of Alaska have agreed to this in a referendum. Now if we adopt this ordinance it would, of course, repudiate that statement. Now we all know that the position taken now by the Department of the Interior is misleading because 10 years ago the referendum was voted on and it was a compromise referendum anyway. It was an addition added that the traps wouldn't be abolished except over a period of 10 years. Now I think it is necessary, in addition to taking care of the transitional measure, it would serve the purpose of showing to the Secretary of the Interior that the people of Alaska want to abolish traps immediately. Using Secretary McKay's reasoning, he claims that the people of Alaska agreed to abolish traps over an 18-year period. Now it has some other effects, too. I don't think this particular act is going to affect us nationally. It is going to affect the cause of statehood adversely and I think we probably owe it to the fishermen of Alaska to protect them even during this small period. We all know that we have had the same problem with the Department of Interior, and I don't want to confine my remarks to Secretary McKay because that isn't accurate. We didn't get any better treatment in the 20 years preceding McKay's taking over of

office so our cause can't be attributed to any political party. Both major political parties have treated the issue the same way. They have neglected the need of necessary legislation. Now it seems to me that this is the first time the people of Alaska have had an opportunity to abolish fish traps. We are sovereign, I mean when the constitution comes into effect we can abolish fish traps and I think we have a duty to abolish them at the instant we can exercise our sovereignty. That is the essential purpose of the act. Now, I am not an expert on fishing matters but some of the other delegates that are can certainly, I am sure, convince all the delegates here that the language that was used in this particular provision is certainly adequate and accurate, and from the people that I have talked to, they have advised me that unless the state takes over the instant they can, that they will be materially damaged, and that's the main reason for the ordinance. You can see from the ordinance that the people of Alaska state that the salmon are a part of the public domain. The ordinance further states that we are trying to provide fair competition among the individual fishermen. To make the ordinance workable we had to put a violation clause in, and we have provided for confiscation. The reason that we provided for an individual vote on the ordinance is to insure its complete validity, because it gives the people a chance to exercise their sovereignty again. They are voting "yes" or "no" to abolish fish traps the instant they can exercise their sovereignty. I had a couple of other notes I wanted to use. Now some might argue that this isn't a proper subject for the constitution. Our position is that it is not in the main part of the constitution so it takes care of that objection. I think there is a real necessity to have such an ordinance; I think that it will serve a useful purpose; I think that its legality can be upheld; I think it will have the effect of a larger turnout to vote on the constitution itself. It points out to the individual voters that if they want to abolish fish traps they have to first become a state, and that is the only way they are going to get rid of fish traps unless they are going to wait another 10 years. That's about all I have to say on it.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, may I direct a question to Mr. Buckalew?

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

JOHNSON: Mr. Buckalew, I am not particularly concerned about fish traps as such but do you think the language as used in this proposed ordinance would cover fish wheels and if so, would it make an operator of a fish wheel amenable to this provision by a fine of \$5,000?

BUCKALEW: Well, we have better experts than I am. I would

say no. It is confined to traps used for the commercial taking of salmon.

JOHNSON: Well, a fish wheel is a device, I don't know whether you would call it a trap or not, but it is a device for the taking of commercial fish, and you say, "Fish traps for taking salmon for commercial purposes are hereby prohibited in all waters of the state unless otherwise provided by law." Now there are many fish wheels in operation on the Yukon and Kuskokwim and other rivers in the interior of Alaska, and they take the fish for commercial purposes.

BUCKALEW: Well, Mr. Johnson, I don't think you can cover it, but if there was any doubt in your mind I wouldn't object to adding an exception.

JOHNSON: I don't think they should be covered but I don't see that they are excluded in this.

BUCKALEW: I think Mr. Emberg could probably answer that question better than I can.

PRESIDENT EGAN: Mr. Emberg, if you would.

EMBERG: I would like to answer that question. The definition of a trap is in Section 101.14 of the laws and regulations for the commercial fisheries of Alaska. It defines the trap as any "fixed device operated for the purpose of or resulting in the impoundment of live fish", and your fish wheel doesn't do that. It takes and dumps them in the box and they are no longer live fish.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I have seen a fish wheel operating for years out here on Chena Point and the fish are caught in the wheel and they drop into a box and they stay alive for varying periods of time but they aren't dead. I've bought fish out of the box when they were still alive.

PRESIDENT EGAN: Mr. Coghill has been attempting to get the floor.

COGHILL: I would like to ask a question of whoever might be able to answer it, probably Mr. Emberg. A fish trap is considered a stationary unit and a fish wheel would be mobile by the river current. It would be a moving unit, so therefore would not come under the provisions of a fish trap.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I wish to move to amend the proposed Section 20 by deleting lines 8 to 14 inclusive on page 1, line 1 on page 2,

and the words "state legislature" on line 2 of page 2 and that a capital "T" be substituted for a small "t" in the word "the" on line 2; further that the last two sentences be deleted so that the indented portion is retained; further that the last two sentences be deleted, so that the indented portion of Section 20 will read --

JOHNSON: Point of order. Is this matter before us now subject to amendment? I thought it was simply open for discussion.

PRESIDENT EGAN: At this time your point of order might be well taken, until the Committee indicates that they are ready to have amendments proposed to this section. That would be the proper time Mr. Hellenthal.

HELLENTHAL: I will withhold my amendment until that time.

PRESIDENT EGAN: If we are still in the process of questions and answers Mr. Robertson.

ROBERTSON: Mr. President, I would ask Mr. Buckalew when the waters of Alaska became the public domain of Alaska as stated in line 12, page 1?

PRESIDENT EGAN: Mr. Buckalew, could you answer that?

BUCKALEW: I thought they were the public domain of Alaska now.

ROBERTSON: I don't think any legal definitions includes the water as public domain.

BUCKALEW: I'd say that the waters in and around Alaska would certainly belong to Alaska. They don't belong to Russia.

PRESIDENT EGAN: Are there further questions to be asked of the Committee at this time? Mr. Robertson.

ROBERTSON: I would like to ask Mr. Emberg a question. I think it was Monday of this week, Mr. Emberg, that in the Fairbanks News Miner there was quite a large picture of a fish wheel, presumably on one of these nearby rivers in which it stated that the picture was to the effect that no longer logs were being used but empty oil drums. Now aren't those fish wheels used to catch commercial fish? Don't they sell fish from them?

EMBERG: I would like to qualify my statements, of course. To start with is the fact that I don't believe there is anything that you can call an expert on fisheries. I have been dealing in fishery problems for a long time, personally, and as a representative of the fishermen, and am in a way a specialist in fishermen's troubles. I have had no experience in the commercial fisheries here on the Yukon River. I do know the

commercial fisheries on the coast, particularly those in the Bristol Bay area. I think someone else will have to answer your question whether there is actually a commercial fishery that is based on fish wheels. I think that Mr. Coghill's information or objection is true, that the fish wheel is mobile gear; it can be moved. The trap and set net are fixed gear; they cannot be moved. They fall into different classifications.

PRESIDENT EGAN: Mr. Coghill has indicated that he can answer your question.

COGHILL: I can probably answer your question as to the fish wheel. I would say that 90 per cent of the value of a fish wheel is commercial; that is, dog salmon and king salmon and all the salmon strips, the putting up of dog salmon that is sold to the traders along the Yukon River, the Native people use that as a form of economy. They store their fish and sell the excess part that they wouldn't use for their own teams. It is in a sense to them a commercial unit.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Is it not true, Mr. Coghill, that in the sense of the utility of this particular section here, that the only commercial fisheries on the Yukon River, or down at Kwiguk or Alakanuk, and all the fish that are caught there are caught by gill nets, not by fish wheels?

PRESIDENT EGAN: Mr. Robertson had indicated that he had another question when he had the floor.

ROBERTSON: I would like to ask Mr. Coghill, is your position, Mr. Coghill, then, that a fish trap must be a stationary fixed appliance in order to become condemned under this proposal of Mr. Buckalew's?

COGHILL: I have never seen a fish trap as they propose in here and in inquiring about it, that is what I had in mind, that a fish trap was one of stationary purpose and a fish wheel wouldn't be under that category.

ROBERTSON: I would like to ask the question then, do you know that Judge Folta a year ago this spring held that drifting gill nets used over near Yakutat at the mouth of the Situk River were fixed and stationary appliances; that they couldn't be set any closer than any other stationary gear?

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I think that was done in a different definition. I would like to ask Mr. Emberg, if I may.

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

V. FISCHER: Are there any fish traps in Alaska located on rivers or are they all out in the Territorial waters?

EMBERG: They are all out in Territorial waters.

V. FISCHER: If that is so, would it not be possible to remove any question about fish wheels by just defining the waters a little bit more?

EMBERG: I should think that would be possible if there was any doubt; I don't see how the fish wheel can be, unless it is further reclassified - included in a class with fixed gear.

PRESIDENT EGAN: Mr. Lee.

LEE: If I can make an effort to answer Mr. Robertson's question, I think that the attorneys here, if they were willing to speak, would assure us all that there is ample information about what a fish trap is. It has gone through the courts and there are stacks of decisions that high, to my knowledge, and I think Mr. Robertson is familiar with that fact, also. I think we can have ample proof by just using the general term "fish trap" we can surely decide exactly what it is because in the court decisions that have been handed down often to the various fishery states, the term "fish traps" has been used as applying to the salmon.

PRESIDENT EGAN: Mr. Barr.

BARR: I don't like to have to go to court for a definition if it isn't necessary. We spoke of fish wheels, but I have also seen fish traps operate in very small streams. Natives use them to catch salmon. They are very small traps made out of willows, they look something like a woven basket with wings extending out. I don't imagine that those would be held to be fish traps under this but why not define fish traps? It seems to me, in many cases I have seen these traps referred to as pile-driven traps. We could say that, or if there are other types we could say "traps operated in coastal waters" or some such thing. A simple amendment it seems to me, could fix the whole thing up.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, of course this only applies to the commercial taking of salmon and the traps you probably have reference to are family-used.

BARR: Well, all of the Natives sell their fish. They may eat a few of them but if they get enough they will sell them.

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

RECESS

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

JOHNSON: Mr. President, I move that the Convention stand adjourned until tomorrow afternoon at 1:30 o'clock.

PRESIDENT EGAN: Mr. Johnson moves and asks unanimous consent that the Convention stand adjourned until tomorrow afternoon at 1:30. Mr. Coghill.

COGHILL: Is that excepting announcements of committees?

PRESIDENT EGAN: Are there any announcements of committees at this time?

COGHILL: Your Committee on Administration will meet tomorrow morning at 10:00 o'clock in Apartment 1012 of the Polaris Building.

PRESIDENT EGAN: Committee on Administration tomorrow morning at 10:00 o'clock in Apartment 1012 in the Polaris Building. Miss Awes.

AWES: I just wanted to ask a question. Is the bus going to be at the Nordale at 1:00 tomorrow?

PRESIDENT EGAN: Did you find out anything about that, Mr. Coghill? The bus will be at the Nordale at 1:00 tomorrow afternoon, so says the Chairman of the Administration Committee. Mr. McNealy.

MCNEALY: Mr. President, the Committee on Ordinances will meet immediately upon adjournment.

PRESIDENT EGAN: The Committee on Ordinances will meet immediately upon adjournment. Mr. Sundborg.

SUNDBORG: The Committee on Style and Drafting will meet immediately upon adjournment in the gallery and will be here meeting all tomorrow morning until the time of convening.

PRESIDENT EGAN: Committee on Style and Drafting will meet immediately upon adjournment and all tomorrow morning. Mr. Knight, did you have something? Or are there any other committee announcements or is there anything else to come before the Convention before we adjourn? Mr. Coghill?

COGHILL: I have received another shipment of these Alaska reports on the White House Conference on Education and have enough for all the delegates so those who did not receive a report if they wish to have one, if they will contact me I will be glad

to give them one.

PRESIDENT EGAN: You have heard the announcement made by Mr. Coghill. Mrs. Hermann.

HERMANN: May I make a suggestion before we adjourn?

PRESIDENT EGAN: You may make a suggestion, Mrs. Hermann.

HERMANN: It seems to me that we are going to have a great many amenities to take care of before we adjourn here and thank you's to various people and things of that sort, and some of these people who are through with their work and want to be busy for awhile, might be assigned as a special committee to take care of that. That is just a suggestion. I don't make it as a motion.

PRESIDENT EGAN: We might keep that in mind and tomorrow or the next day appoint such a committee. Mr. Coghill.

COGHILL: The Committee on Administration has already started considering that.

PRESIDENT EGAN: If there is no objection, the Convention will stand adjourned until 1:30 p.m. tomorrow.