Vic Fisher's Book published in Sept 1975 by University of Alaska Press

through provisions for:

- Not more than twenty principal departments.
- The head of each department to be a single executive unless otherwise provided by law.
- Reorganization by executive order subject only to disapproval by the legislature within a prescribed period.
- All department heads to be appointed by the governor subject to approval of the legislature in joint session; in cases where a board or commission is authorized by law to appoint its executive officer, the appointment is subject to the governor's approval.

7. Authorization for the governor to convene the legislature, jointly or either house separately.

In these and other provisions, the convention laid the groundwork for a strong executive branch.

Judiciary Branch

The proposal dealing with the judiciary branch was the first to be considered by the convention. It emanated from a committee that was in general accord over the future state's judicial system. Consisting of five lawyers and two laymen, the committee quickly agreed to follow principles suggested by the American Bar Association and other professional civic groups. The main features of the proposed system were unity, simplicity, efficiency, accessibility, independence from the executive and legislative branches, and accountability to the people. The committee could start with an essentially clean slate—Alaska was then under the jurisdiction of federal courts, and these would fall away with statehood.

Members of the judiciary committee proposed a unified judicial system consisting of a supreme court, a superior court, and other courts established by the legislature. The entire court system was placed under the rule-making authority of the supreme court, with the chief justice named as the administrative head of all state courts. These provisions followed closely the example of the New Jersey constitution of 1947, which transformed one of the most cumbersome and costly state court systems into one recognized for its efficiency.

The judiciary article also embodied a nonpartisan plan for selecting judges based on the American Bar Association and Missouri Plan models. Under it, the governor appoints judges from nominees

presented to him by the judicial council, which is composed of three laymen appointed by the governor with the consent of the legislature; three attorneys named by the organized state bar; and the chief justice, who serves as chairman. Three years after his first appointment, a judge must submit his name to the voters of the state or of his district for approval or rejection. Once approved, a superior court judge goes before the voters for reconfirmation every seven years, and a supreme court justice stand for popular approval every ten years. The purpose of this provision is to make judges responsible to the people without subjecting them to partisan politics or competitive campaigns for election or re-election.

With respect to retirement of judges, attorney members of the committee R.E. Robertson of Juneau, seventy, and Warren Taylor of Fairbanks, sixty-four, strongly dissented from the proposal to set the retirement age for judges at seventy. They felt that ability to serve does not necessarily end at age seventy and that those reaching this age should "not be put in mothballs." A committee compromise was finally reached according to which judges would retire at age seventy but could be given special judicial assignments thereafter.[79]

Once the committee agreed on the proposed article, committee chairman McLaughlin sent letters to the presidents of the Alaska Bar Association and local bar associations, district judges, the U.S. attorney, and the U.S. Commissioner in Alaska, and to others in and out of the territory, asking for their comments on the draft. As a consequence, many endorsements of the proposal were obtained, including action by the board of governors of the Alaska Bar Association, which met in Fairbanks during the time the judiciary article was before the convention. The board agreed to support the article as recommended by the committee, and members of the board of governors appeared before the judiciary committee and spoke in behalf of the proposal with individual delegates.

The proposed judiciary article was considered in plenary session on December 9, one month and one day after the convention began. A number of amendments were considered in second reading, dealing with such issues as the responsibility for drawing judicial district boundaries, selection of the judicial council, and qualification of judges.

The committee proposal required supreme court and superior court judges to have been admitted to practice law in Alaska at least five years prior to their appointment and to have been residents of the state for the same period. In line with general opposition to

[79] *Anchorage Daily Times*, 6 December 1955.

excessive qualification requirements, the convention rejected both provisons. As finally passed, the article required only citizenship of the United States and Alaska and a license to practice law in the state. However, it also provided that the legislature could prescribe additional qualifications.

While the judiciary committee's residence requirements were defeated by convention delegates, its proposal that judges and justices be appointed by the governor upon nomination by the judicial council was upheld against those who favored an elected bench. The latter argued that the "appointment method will bring judges into politics more so than an election by the people."[80] The argument in favor of appointment was that judges chosen through elections would forever be looking over their shoulders to see if their decisions were popular. According to committee chairman George McLaughlin, all modern state constitutions and recent constitutional revisions provided for judicial appointment.[81] McLaughlin was reinforced by Fairbanks attorney Warren A. Taylor, who said that if the article were adopted, every university in the United States that has a law school and all law societies that have the opportunity of reading this article can honestly say that we have perhaps the most progressive and most modern and up-to-date system of selecting the judiciary of any state in the United States.[82]

Before the debate on this issue was over, nearly every attorney at the convention had spoken on this subject. In the end, only one other delegate, W.W. Laws of Nome, joined attorney Robert McNealy in opposing the selection process for judges; and the appointment process was sustained by a fifty-one to two vote.[83]

McNealy again opposed the proposed selection when the judiciary article was in third reading. He once more lashed out at what he believed to be a process potentially subject to much greater political interference and corruption, declaring that the election of judges was the one way to keep politics out of the judiciary. Though he won a few converts, his fight was futile, and the judiciary article met approval by a forty-seven to six vote.[84]

The approval of the judiciary article by the delegates was, however, not the last point at which basic questions were raised about its provisions. The convention consultants' memorandum reviewing the entire constitution pertained in part to the sections

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[80] *Proceedings*, p. 588.
[81] *Ibid.*, pp. 583-87.
[82] *Ibid.*, p. 590.
[83] *Ibid.*, p. 610.
[84] *Ibid.*, pp. 2861-5.

that laid the basis for a strong and independent judiciary.[85] While they concurred with the basic objectives, the consultants stated that:

> These sections in particular, however, go a long way toward withdrawing the judicial branch from the control of the people of this state and placing it under that of the organized bar. No state constitution has ever gone this far in placing one of the three coordinate branches of the government beyond the reach of democratic controls. We feel that in its desire to preserve the integrity of the courts, the convention has gone farther than is necessary or safe in putting them in the hands of a private professional group, however, public-spirited its members may be.

The consultants then suggested a number of revisions that would, in their view, democratize the proposed system by providing for legislative confirmation of attorney members of the judicial council, adding a superior court judge and another lay member to the membership of the council, and other changes. However, the suggestions were not accepted by the meeting of committee chairmen and never reached the convention floor.

Try to find out if this guy was one of the lawyers. I'm sure he was.

Local Government[86]

In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.

Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.

A New Local Government System

Study of the PAS staff paper[87] and a review of local govern-

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[85] See Chapter 3, pg. 42.

[86] For more information on this topic, see the author's chapter "The Constitution Framework" in Thomas A. Morehouse and Victor Fischer, *Borough Government in Alaska*, pp. 33-65.

[87] Public Administration Service, *Constitutional Studies*, Chapter VIII.