SB

165

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/12/81

Date: May 4, 1981

Mr. President:

The Committee on JUDICIARY has had SB 165

constitutional conventions

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass [ ] do not pass

[ ] do pass with attached amendment(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends ADDITION OF STATE DEFENSE FUND NOTE

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

Frank Haas

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

(6 pgs)

SENATE AMENDMENT

BY ~~SENATE~~ Judiciary Comm

To: Committee Substitute for SENATE BILL No. 165 (S.A.)

To: _____ HOUSE BILL No. _____

PAGE: ~~2~~ LINE:

Page 2, line 25:

DELETE: "FOR THE THREE YEARS PRECEDING" ~~AND INSERT~~

Page 2, line 29:

DELETE: "THE THREE YEARS" AND INSERT "ONE YEAR"

AMENDMENT

OFFERED IN THE SENATE: BY: Senate Judiciary

TO: ~~Senate Secretary~~ SENATE BILL No. CSSB 165 (S.A.)

HOUSE BILL No. _____

PAGE: _____ LINE: _____

Page 2, line 25:
Delete: "for the three years preceding"

Page 2, line 29:
Delete: "the three years" and insert "one year"

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

M E M O R A N D U M

RECEIVED
APR 16 1981

TO: Senator Pat Rodey, Chair
Judiciary Committee

Representative Brian Rogers, Chair
Constitutional Convention Committee

FROM: Senator Vic Fischer VF

DATE: April 14, 1981

RE: SB 165 - Preparatory Commission

Attached is an April 10 Attorney General letter once more throwing cold water on a joint executive-legislative appointment procedure for a preparatory convention.

Pat - I hope you move this bill along as rapidly as possible. I think it's urgent that SB 165 be enacted this session.

/sq

attachment

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 10, 1981

Hon. Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Constitutional convention
preparatory commission
Our file: J-66-557-81

Dear Senator Fischer:

You have asked whether we can find any kind of joint executive-legislative appointment of a commission to prepare for a constitutional convention to be legally acceptable. We regret to advise that we cannot.

There are at least two cases, each of which includes a compelling dissent, which hold that a legislator's serving as a delegate to a constitutional convention is not holding a dual office. Harvey v. Ridgeway, 450 S.W.2d 281 (Ark. 1970); Bd. of Supervisors of Elections v. Attorney General, 229 A.2d 388 (Md. 1967). Both cases ignore the case authority in their own and other states in arriving at their decisions. Accordingly, neither is persuasive. Our own court takes a broad view on what is an office. Larson v. State, 564 P.2d 356 (Alaska 1977). And the cases uniformly hold that an office is "'a public charge or employment, the duties of which are prescribed by law, and he who performs the duties is an officer.'" State v. Dunn, 496 S.W.2d 480, 490 (Tenn. 1973), quoting from State v. Bratton, 253 S.W. 705 (Tenn. 1923). See also Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968)(prohibition against dual-office holding literally applied). The Alaska Constitution expressly makes employment by or election to a constitutional convention an exception from the prohibition against legislators' holding dual office. Alaska Const., art. II, § 5. In Begich, the court stated that these (and other) express exceptions in the constitution necessarily result in the prohibition's extending to all other offices. 441 P.2d at 30-33.

It might be argued that legislative appointees to the preparatory commission are employees of the convention.

However, while the legislature is empowered to made provision for the convention, "by law," Alaska Const., art. XIII, § 3, the constitution does not make an exception for the legislature to appoint either its members or its agents to be the officers or employees of the convention or for either to serve on a commission appointed by the legislature in whole or in part. Absent constitutional provision to the contrary, the chief executive is the appointing authority for those charged with carrying out a law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Either on an informal basis or on a basis formalized by law, resolution, or interbranch agreement, the agencies of the two branches -- including duly established permanent or ad hoc interim committees -- can certainly cooperate in studies and gathering information to prepare for a convention. So too, the legislature, through existing or duly established interim committees can study the needs for constitutional reformation. But the legislature cannot write a public law and then appoint a commission of its own members or agents to carry it out. Book v. State Office Bldg. Comm'n, 149 N.E.2d 273 (Ind. 1958).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

William Sidney GILBERT, Appellant,
v.
STATE of Alaska and H. A. Boucher, Lieutenant Governor, Appellees.
No 2290.

Supreme Court of Alaska.
Sept. 30, 1974.

Action for declaratory judgment by potential candidate for state senator, seeking declaration that requirement of three-year residency in state and one-year residency in election district for election to legislative office violated the candidate's equal protection rights. The Superior Court, Third Judicial District, Anchorage District, P. J. Kalamarides, J., denied the petition, awarded attorney's fees to the state, and candidate appealed. The Supreme Court, Erwin, J., held that the residency requirement served a compelling state interest and thus did not deny candidate equal protection; but that it was an abuse of discretion to award attorneys' fees against the candidate who had in good faith raised a question of genuine public interest before the courts.

Affirmed in part and reversed in part.

1. Constitutional Law ⇐83(1), 211
Elections ⇐21

Residency requirements for state legislative candidacy of three years in state and one year in election district serve compelling state interests, and thus neither violated potential candidate's rights to equal protection or to freedom of interstate travel, nor did they violate voters' rights to participate in elections. Const. art. 1, § 1; art. 2, § 2; AS 15.25.030; U.S.C.A.Const. Amend. 14.

2. Constitutional Law ⇐209

Where statute challenged as violative of equal protection burdens fundamental or basic right, it can be sustained only upon showing that it promotes compelling governmental interest. U.S.C.A.Const. Amend. 14.

3. Elections ⇐7

Constitutional residency requirements for legislative candidates should be viewed with strict judicial scrutiny, i. e., whether they serve compelling state interest. Const. art. 2, § 2.

4. Costs ⇐172

Award of attorney's fees to state against potential candidate for legislature who in good faith raised issue of constitutionality of residency requirements was abuse of discretion. Rules of Civil Procedure, rule 82.

5. Costs ⇐172

It is not purpose of award of attorney's fees to penalize party for litigating good-faith claim but rather partially to compensate prevailing party where such compensation is justified. Rules of Civil Procedure, rule 82.

6. Costs ⇐172

It is abuse of discretion to award attorney fees against losing party who has in good faith raised question of genuine public interest before courts. Rules of Civil Procedure, rule 82.

John W. Wood, Anchorage, for appellant.

Norman C. Gorsuch, Atty. Gen., Juneau, Timothy G. Middleton, Asst. Atty. Gen., Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

ERWIN, Justice.

This appeal involves a challenge to the constitutionality of article II, section 2 of the Alaska Constitution and AS 15.25.030, which collectively conditions eligibility for seeking legislative office upon three years residency in the state and one year in the election district.

Appellant is a citizen of the United States and has been a resident of Alaska

and of his legislative district since September 17, 1973. On June 28, 1974, he filed as a Republican candidate for the state senate in the August 27, 1974, primary election. On July 5, 1974, respondent Lieutenant Governor H. A. "Red" Boucher informed appellant by telegram that his declaration of candidacy was rejected because he did not meet the residency requirements of article II, section 2 of the Alaska Constitution [1] or the requirements of AS 15.25.030.[2] Respondent later confirmed this rejection by letter. It was stipulated below that appellant met all other requirements for the office of state senator.

Appellant petitioned pursuant to AS 22.10.020(b) for a declaratory judgment that article II, section 2 of the Alaska Constitution abridged his rights of equal protection and effective petition of the government [3] and moved for a preliminary injunction to place his name on the August 27 ballot. The superior court held that the three-year residency requirement served a compelling state interest in assuring that legislators reside in the state a sufficient time to gain an understanding of the history and geography of the state and the needs and problems of its residents. The court further determined that the constitutional convention wisely decided that the one-year required residence in the election district was necessary to permit constituents to recognize, understand and talk with those who seek public office. As a result, both appellant's petition for a declaratory judgment and his motion for a preliminary injunction were denied. The court awarded attorneys' fees to the state.

Appellant argues that (1) the durational residency requirements of article II, section 2 of the Alaska Constitution should be subjected to strict judicial scrutiny under the equal protection clauses of the state and federal constitutions;[4] (2) that the state has failed to show that a compelling interest is promoted by the requirements; (3) that, even if a compelling interest exists in some specific residency requirement, requiring a period of three years' residency within the state and one year within the election district is excessive; and, (4) the award of attorneys' fees below was an abuse of discretion. More specifically, appellant contends that both residency requirements deprive him of equal protection by (1) limiting his right to seek and hold public office; (2) limiting his ability and the ability of voters who would support him to participate in the electoral process; and, (3) restrict his right to freely travel between the states.

[1,2] No specific right of candidacy for public office has been recognized under the Federal Constitution.[5] However, since barriers against candidacy have been treated as limitations upon a fundamental right where they burden such important

1. Art. II, sec. 2, Alaska Constitution, provides, in pertinent part:
   A member of the legislature shall be a qualified voter who has been a resident of Alaska for at least three years and of the district from which elected for at least one year, immediately preceding his filing for office.

2. AS 15.25.030 provides in pertinent part:
   A member of a political party who seeks to become a candidate of the party in the primary election shall execute and file a declaration of candidacy. The declaration shall be executed under oath before an officer authorized to take acknowledgments and shall state in substance . . . . (8) that the candidate meets the specific residency requirements of the office for which he is a candidate . . . . .

3. Appellant has not briefed the alleged infringement of his right to petition the government before this court and we have not considered it on appeal.

4. We find without merit appellant's novel contention that article II, section 2 of the Alaska Constitution setting residency requirements is invalid under the equal protection clause of article I, section 1 of the same constitution.

5. The Supreme Court has previously held that "[t]he right to become a candidate for state office, like the right to vote for the election of state officers, is a right or privilege of state citizenship, not of national citizenship." Snowden v. Hughes, 321 U.S. 1, 7, 64 S.Ct. 397, 400, 88 L.Ed. 497, 502 (1944) (citations omitted).

rights as free association,[6] franchise,[7] and interstate travel,[8] they are vulnerable to attack under the equal protection clause of the Federal Constitution. Where a challenged statute burdens a fundamental or basic right, it can be sustained only upon a showing that it promotes a compelling governmental interest.[9]

In Bullock v. Carter,[10] the United States Supreme Court reviewed the validity of a Texas statute which required the payment of large filing fees by candidates to defray the expenses of holding primary elections. The court noted that

> the rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlative effect on voters.[11]

Because the fee requirement tended to discriminate against both less wealthy candidates and voters who were without large financial resources with which to support a candidate, the Court subjected the requirement to strict scrutiny and found that the state had failed to show it was necessary to promote a legitimate state objective.[12]

In Shapiro v. Thompson[13] and Dunn v. Blumstein,[14] the Supreme Court recognized that durational residency requirements burden the basic constitutional right of interstate migration. *Shapiro* struck down a durational residency requirement which was a prerequisite to the receipt of welfare benefits. *Dunn* subjected a one-year residency requirement which conditioned the right to vote to strict scrutiny because it burdened both the fundamental right of franchise and the right to interstate travel.

We have previously considered questions involving durational residency requirements in State v. Van Dort,[15] State v. Wylie,[16] and State v. Adams.[17] In each of these cases we applied the compelling state interest test. In *Wylie* we were unable to find a compelling interest for giving a hiring preference to applicants for state employment who had resided in Alaska for at least one year. In *Adams*, we considered the validity of a residency requirement for obtaining a divorce and stated that all durational residency requirements are to be measured by the compelling state interest test.[18] We invalidated a 75-day residency requirement for voting in *Van Dort*. However, we noted

> [w]e do not hereby decide that all durational residency requirements are *ipso facto* unconstitutional.[19]

A number of other courts have considered the burden upon voters imposed by durational residency requirements for political candidates. Federal district courts

6. *See, e. g.*, Maneuso v. Taft, 476 F.2d 187 (1st Cir. 1973).

7. *See, e. g.*, Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 856, 31 L.Ed.2d 92 (1972). Political hopefuls have standing to attack candidacy restrictions which burden the rights of voters, where the candidates fall within the class of persons allegedly suffering an unequal discrimination. Maneuso v. Taft, 476 F.2d 187 (1st Cir. 1973); *see also*, Bullock v. Carter, 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); Jenness v. Fortson, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1970).

8. *See, e. g.*, Chimento v. Stark, 353 F.Supp. 1211 (D.N.H.), aff'd mem. 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973); Wellford v. Battaglia, 485 F.2d 1151 (3rd Cir. 1973).

9. Dunn v. Blumstein, 405 U.S. 330, 340-341, 92 S.Ct. 995, 1002, 31 L.Ed.2d 274, 283 (1972); Chimento v. Stark, 353 F.Supp. 1211, 1213 (D.N.H.) aff'd mem. 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973).

10. 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972).

11. *Id.* at 143, 92 S.Ct. at 856, 31 L.Ed.2d at 99.

12. *Id.* at 149, 92 S.Ct. at 858, 31 L.Ed.2d at 103.

13. 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969).

14. 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972).

15. 502 P.2d 453 (Alaska 1972).

16. 510 P.2d 142 (Alaska 1973).

17. 522 P.2d 1125 (Alaska 1974).

18. *Id.* at 1126.

19. 516 P.2d at 148.

have favored the strict compelling interest test in Alabama,[20] Delaware,[21] Michigan,[22] New Hampshire,[23] and Oklahoma.[24] The highest state courts in California[25] and New Jersey[26] have also considered the question and found the strict standard to be the appropriate one.[27]

[3] These cases, and our own cases relating to durational residency requirements, lead us to the conclusion that the residency requirements of article II, section 2 of the Alaska Constitution should be viewed with strict judicial scrutiny. We must thus determine whether the requirements of three years' residency in the state and one year in the election district serve a compelling state interest.

The State of Alaska asserts three justifications for upholding the challenged requirements. First, the requirements are necessary to permit exposure of the candidate to his prospective constituents so they may judge his character, knowledge and reputation. Second, they are needed to ensure that legislators are familiar with the diverse character of the state where they will participate in the lawmaking process. Third, specific periods of residency are alleged to protect the state from frivolous candidacies. For the reasons stated below, we find the first two of these interests to be compelling.

These interests advanced by the state are essentially those which were found sufficient to uphold New Hampshire's seven year residency requirement for the office of Governor in Chimento v. Stark.[28] *Chimento* was affirmed without opinion by the United States Supreme Court after the Court's decision in *Dunn*. If the Court had intended to extend *Dunn* to candidacy requirements, the opportunity was squarely presented in *Chimento*.[29] However, the Court declined to take advantage of this opportunity.

In determining whether the asserted state interests are compelling, we must look not only to those interests but also to the competing individual interests.[30] Chief Justice Burger observed in Bullock v. Carter:

> In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.[31]

We believe that the three-judge federal panel in Chimento v. Stark correctly analyzed the extent to which these competing interests are affected by a durational residency requirement.

20. McKinney v. Kaminsky, 340 F.Supp. 289 (M.D.Ala.1972); Hadnott v. Amos, 320 F. Supp. 107 (M.D.Ala.1970), aff'd mem., 401 U.S. 908, 91 S.Ct. 1189, 28 L.Ed.2d 318 (1971), 405 U.S. 1035, 92 S.Ct. 1304, 31 L.Ed.2d 576 (1972).

21. Wellford v. Battaglia, 343 F.Supp. 143 (D.Del.1972), aff'd, 485 F.2d 1151 (3rd Cir. 1973); *but see* Walker v. Yucht, 352 F.Supp. 85 (D.Del.1972).

22. Alexander v. Kummer, 363 F.Supp. 324 (E.D.Mich.1973); Mogk v. City of Detroit, 335 F.Supp. 698 (E.D.Mich.1971); Green v. McKeon, 335 F.Supp. 630 (E.D.Mich. 1971), aff'd, 468 F.2d 883 (6th Cir. 1972); Bohanowski v. Raich, 330 F.Supp. 724 (E.D.Mich. 1971); Stapleton v. Clerk for the City of Inkster, 311 F.Supp. 1187 (E.D.Mich.1970).

23. Chimento v. Stark, 353 F.Supp. 1211 (D.N.H.), aff'd mem. 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973).

24. Draper v. Phelps, 351 F.Supp. 677 (W.D. Okl.1972).

25. Thompson v. Mellon, 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973).

26. *See* Gangemi v. Rosengard, 44 N.J. 166, 207 A.2d 665 (1965).

27. *Compare* State ex rel. Gralike v. Walsh, 483 S.W.2d 70 (Mo.1972).

28. 353 F.Supp. 1211 (D.N.H.), aff'd mem. 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1973).

29. *See* Hadnott v. Amos, 320 F.Supp. 107 (M.D.Ala.), aff'd mem. 401 U.S. 908, 91 S.Ct. 1189, 28 L.Ed.2d 318 (1971), 405 U.S. 1035, 92 S.Ct. 1304, 31 L.Ed.2d 576 (1972).

30. Dunn v. Blumstein, 405 U.S. 330, 335, 92 S.Ct. 995, 999, 31 L.Ed.2d 274, 280 (1972); *see* State v. Adams, 522 P.2d 1125, 1131 (Alaska 1974).

31. 405 U.S. 134, 143, 92 S.Ct. 849, 856, 31 L.Ed.2d 92, 100 (1972).

When examined in a realistic light, we conclude that the seven year residency requirement acts only as a minimal infringement upon the ability of the plaintiff to participate in the election process and that its limiting effect upon the voters' choice of candidates is more hypothetical than real. Any residency requirement limits to some extent the choice of candidates available to the voters. But this is the least of the restrictions limiting candidate availability. The method of nominating candidates, minimum age requirements, and the high cost, even in New Hampshire, of a gubernatorial campaign, are also factors that restrict the number of candidates available to the voters. Moreover, the seven year period does not act as an outright ban on anyone's candidacy for Governor; rather, it delays the eligibility of a candidate to the office of Governor until a time when he has been a resident of the State for seven years. While we recognize that seven years may be a long wait for one aspiring to the office of Governor, it is not a complete barrier to that office. There are lesser but nonetheless important offices that a putative Governor might well fill during the waiting period with benefit both to his own political career and the people of the State.[32]

This reasoning is clearly applicable to Alaska's much shorter three-year legislative residency requirement. Even during that brief period delaying the candidate's right to seek office, the voters remain free to vote for anyone who may lawfully assume office. The impact upon the voters' right to have a meaningful choice of candidates is slight.

We also reject the argument that Alaska's legislative residence requirements are a serious infringement of appellant's right to interstate travel. Unlike the requirements considered in Dunn v. Blumstein and in State v. Van Dort, these requirements do not disenfranchise all new residents of the state. Nor do they tend to deprive a large class of newcomers of the necessities of life as did the restriction considered in Shapiro v. Thompson. Because they potentially limit only that minute class of persons who would move to a new location intending to run for political office, it cannot seriously be asserted that limiting the privilege of candidacy to residents who have lived in the state for t[illegible]ee years and in their legislative districts for a year would discourage citizens from exercising their rights to travel.

The asserted interest of the state in assuring that those who govern are acquainted with the conditions, problems, and needs of those who are governed cannot be questioned. Because Alaska is unique in its geography, the ethnic diversity of its peoples and the character of its economy, this interest may well assume even greater importance here than in many other states. A legislator is required to consider and vote upon matters which affect many parts of the state and involve many segments of its economy and its peoples. It is therefore not unreasonable for the state to provide for a three-year period in which a new resident may become familiar with his state before he may legislate solutions to its problems.

Likewise, it is most important that electors have a period in which they may become familiar with the character, habits and reputation of candidates for political office. Modern media campaigns and "packaged" candidates permit political hopefuls to campaign for office with little or no direct contact with the public they seek to serve. It is essential that voters have at least the opportunity to have some direct knowledge of their candidates in order to judge their sincerity and the truth of the claims which these aspirants for public office press forward through the media. It is a minimal requirement at best to ask a candidate to spend one year as a part of the community he hopes to represent in order to satisfy this need.

32. 353 F.Supp. at 1215–1216.

We see no viable alternative means of advancing these important interests alleged by the state. Appellant suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling.

[4] We turn to the question of whether the award of attorneys' fees to the state by the trial court was a proper exercise of discretion by the trial court pursuant to Civil Rule 82. Appellant alleges that the issues litigated here relate to a matter of public interest and contends that awarding fees in this type of controversy will deter citizens from litigating questions of general public concern for fear of incurring the expense of the other party's attorneys' fees.

[5, 6] It is not the purpose of Rule 82 to penalize a party for litigating a good faith claim but rather partially to compensate the prevailing party where such compensation is justified.[33] We have previously intimated that denial of attorneys' fees might be appropriate in a proper case where the public interest is involved.[34] As a matter of sound policy, we hold that it is an abuse of discretion to award attorneys' fees against a losing party who has in good faith raised a question of genuine public interest before the courts. Accordingly, we reverse the award of attorneys' fees to the state in this matter.

Affirmed in part and reversed in part.

33. Malvo v. J. C. Penney Co., Inc., 512 P.2d 575, 587 (Alaska 1973).

34. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 101 (Alaska 1974); Jefferson v. City of Anchorage, 513 P.2d 1099, 1102 (Alaska 1973).

ALASKA RENT-A-CAR, INC., d/b/a Avis Rent-A-Car, Appellant,

v.

The FORD MOTOR COMPANY, a corporation, Appellee.

No. 1823.

Supreme Court of Alaska.

Oct. 4, 1974.

Third-party action to recover against manufacturer of leased vehicle involved in rear-end collision. The Superior Court, First Judicial District, Juneau, Hubert A. Gilbert, J., entered summary judgment in favor of manufacturer, and lessor appealed. The Supreme Court, Connor, J., held that issue as to whether it might be inferred from evidence that defect existed in leased vehicle when it left hands of manu-

For committing the crime of lewd and lascivious acts upon a child,[1] Ernest Morgan was sentenced to five years imprisonment.[2]

[1] Morgan's first point on appeal is that the trial court in selecting the sentence improperly took into account certain conduct of Morgan which took place after his conviction. This conduct consisted of the rape and torture of a young woman, committed in Morgan's home during a night of heavy drinking. This incident occurred the day after the jury found him guilty of the lewd and lascivious acts offense. The victim of the rape was subjected to brutal and humiliating treatment, with substantial physical injuries, and was also subjected to two acts of sexual intercourse. At the time of sentencing, Morgan was under indictment for these acts. The court also considered information about Morgan's attempted escape from jail, which was placed in evidence by stipulation of the parties.

When the sentencing hearing began, Morgan's attorney argued that the incidents of post-conviction conduct should not have been included in the presentence report, and that he should be able to confront and cross-examine the witnesses to that conduct. However, that demand was later withdrawn. The court then proceeded to use the information about Morgan's conduct which was contained in the presentence report.

Morgan now argues that the use of this information violated his privilege against self-incrimination because it but Morgan in the position of remaining silent or of explaining these allegations and thereby possibly incriminating himself. Under our holdings in *Nukapigak v. State*, 576 P.2d 982 (Alaska 1978), and *Layland v. State*, 549 P.2d 1182, 1183–4 (Alaska 1976), what occurred here was permissible. Morgan was not compelled to be a witness against himself.

[2] As to the sentence itself, our review of the record reveals that in imposing this sentence the court was not clearly mistaken. *McClain v. State*, 519 P.2d 811 (Alaska 1974). Our conclusion is based on the following factors: the details of the offense; Morgan's prior juvenile record (his involvement in two burglaries led to an adjudication of delinquency); his post-conviction conduct; his serious alcohol problem; the conclusions of the presentence and the psychiatric report that Morgan is not likely to respond to treatment and is not motivated to control his use of alcohol.

Affirmed.

1. The defendant pushed his way into an apartment where five children, including a babysitter, were. He threatened the babysitter sexually and she left. Morgan then went into the bedroom, lifted the nightclothes of a sleeping six-year-old girl and crawled on top of her. When one of the other children threatened to phone the police, Morgan got up and pulled the phone out of the wall. When the child threatened to go to the police, Morgan left.

2. AS 11.15.134 states:

"*Lewd or lascivious acts toward children.* (a) A person who commits a lewd or lascivious act, including an act constituting another crime, upon or with the body of a child under 16 years of age, intending to arouse, appeal to, or gratify his lust, passions, or sexual desires, or the lust, passions, or sexual desires of the child is punishable by imprisonment for not more than 10 years nor less than one year."

West Key Number System

Ken CASTNER, Appellant,

v.

CITY OF HOMER and Delores Morrison, Clerk of City of Homer, Appellees.

No. 3798.

Supreme Court of Alaska.

Aug. 24, 1979.

Suit was brought to challenge the constitutionality of a city code provision which imposed a one-year durational residency re-

quirement for candidacy for city office. The Superior Court, Third Judicial District, James A. Hanson, J., upheld the constitutionality of the ordinance, and appeal was taken. The Supreme Court, Connor, J., held that even under the strict scrutiny standard, the durational residency requirement for city office candidacy was constitutional.

Affirmed.

1. Municipal Corporations ⇐138

Even under the strict scrutiny standard, provision of city code imposing a one-year durational residency requirement for candidacy for city office was constitutional.

2. Elections ⇐21

While objective tests for candidacy, such as durational residence requirements, unavoidably place a burden on the privilege of running for political office, the burden is both temporary and slight and is necessary to promote compelling governmental interests.

Martin Friedman, Homer, for appellant.

A. Robert Hahn, Jr., Hahn, Jewell & Stanfill, Anchorage, for appellees.

Before RABINOWITZ, C. J., and CONNOR, BOOCHEVER, BURKE and MATTHEWS, JJ.

OPINION

CONNOR, Justice.

This case concerns a challenge to the constitutionality of Homer City Code Section 3-200.2, which imposes a one year[1] durational residency requirement for candidacy for city office.

Appellant Kenneth Castner is a citizen of the United States, a resident of Alaska, and was a resident of the Homer Recording District for four years prior to becoming a resident of the City of Homer. Castner became a resident of Homer on July 25, 1977, and approximately one month thereafter attempted to file a declaration of candidacy for the office of city councilman, for the election to be held October 4, 1977.

Castner had deleted from his declaration of candidacy that portion which would have stated that he met the residency requirements imposed by the Homer City Code. Deputy Clerk Delores Morrison refused to accept his declaration of candidacy because of this deletion. On August 30, Castner again attempted to file a declaration of candidacy but was refused by Deputy Clerk Morrison because of Castner's inability to comply with that portion of Homer City Code Section 3-200.2 requiring a one-year period of residency within the city.

On August 31, 1977, Castner filed suit in superior court seeking that Homer City Code § 3-200.2 be declared unconstitutional, and that his name be placed on the official ballot. The superior court upheld the constitutionality of the ordinance and denied Castner's claim for relief. Castner appeals from the decision of the superior court.

There are but two issues before us on appeal:

1. The version of Homer City Code § 3-200.2 in effect at the time of Castner's attempted candidacy provided:

> *ELIGIBILITY FOR OFFICE.* A person is eligible for the office of Councilman or the office of Mayor for the City of Homer if he is a voter of the City of Homer as prescribed by Section 4-100.7 of the City Code and has been a resident of the Homer Recording District for a period of three years including a residency within the City of Homer for a period of one year immediately preceding the election day on which he is a candidate.

The question of durational residency requirements for municipal office was submitted to the voters in the October 4, 1977 city election. In accordance with the result of that vote, § 3-200.2 has been amended to read as follows:

> Section 3-200.2 *ELIGIBILITY FOR OFFICE.* A person is eligible for the office of Councilman or the office of Mayor for the City of Homer if he is a voter of the City of Homer as prescribed by § 4-100.7 of the City Code and has been a resident within the City of Homer for a period of one year immediately preceding the election day on which he is a candidate.

Therefore, we need to consider only the constitutionality of *one year* durational residency as applied to the new ordinance.

1. Whether the compelling interest test is the appropriate standard of review for qualifications of candidates for local public office; and,

2. Whether there is a compelling interest to support the City of Homer's one year residency requirement for city offices, and whether this requirement is the least restrictive means available to achieve that compelling interest.

[1] Appellee, the City of Homer, questions the continuing validity of the rationale for application of the compelling state interest advanced by us in *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), in light of the single standard test announced in *State v. Erickson*, 574 P.2d 1 (Alaska 1978). We need not deal with that question here because we are convinced that even under the strict scrutiny required by *Gilbert*, the ordinance can be sustained. In *Gilbert*, we held that durational residency requirements for state elective office should be examined with strict scrutiny *Id.* at 1134, because such durational residency requirements infringed upon fundamental rights:

> "[S]ince barriers against candidacy have been treated as limitations upon a fundamental right where they burden such important rights as free association, franchise, and interstate travel, they are vulnerable to attack under the equal protection clause of the Federal Constitution. Where a challenged statute burdens a fundamental or basic right, it can be sustained only upon a showing that it promotes a compelling governmental interest." [footnotes omitted.] 526 P.2d at 1132-33.

For the purposes of this appeal we may assume, without deciding, that the right to seek elective public office should be treated as fundamental and subject to strict scrutiny.

In *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974), we upheld a durational residency requirement of one year in the district, and three years in the state of Alaska, for the office of state senator. We reasoned that the state had a compelling interest in legislators "who . . . are acquainted with the conditions, problems, and needs of those who are governed," and in electors who are "familiar with the character, habits and reputation of candidates for political office." *Id.* at 1135. These interests are perhaps more compelling in elections for local office, where word of mouth and personal contact are often the only means of communication of community concerns.

There is sufficient authority from other jurisdictions either to uphold or to strike down the one year durational residency requirement in the case at bar. In general, the weight of authority is against longer durational residency requirements for local offices,[2] but the authorities are fairly evenly divided on the constitutionality of a one year residency requirement.[3] The courts validating a one year durational residency requirement have found compelling the in-

2. Durational residency requirements of five years for local offices were held invalid in: *Alexander v. Kammer*, 363 F.Supp. 324 (E.D. Mich.1973) (five year city residency and two year district residency for city commissioner); *Wellford v. Battaglia*, 343 F.Supp. 143 (D.Del. 1972) (mayor); *McKinney v. Kaminsky*, 340 F.Supp. 269 (M.D.Ala.1972) (county commissioner); *Zeilenga v. Nelson*, 4 Cal.3d 716, 94 Cal.Rptr. 602, 484 P.2d 578 (1971) (county supervisor); *Bird v. Colorado Springs*, 507 P.2d 1099 (Colo.1973) (city councilman and mayor).

Durational residency requirements of three years for municipal offices were held invalid in *Bolanowski v. Raich*, 330 F.Supp. 724 (E.D. Mich.1971) (mayor); *Camara v. Mellon*, 4 Cal.3d 714, 94 Cal.Rptr. 601, 484 P.2d 577 (1971) (city councilman); *Cowan v. City of Aspen*, 509 P.2d 1269 (Colo.1973) (municipal offices).

Durational residency requirements of two years for municipal offices were held invalid in *Green v. McKeon*, 468 F.2d 883 (6th Cir. 1972) (city elective offices) and *Thompson v. Mellon*, 9 Cal.3d 96, 107 Cal.Rptr. 20, 507 P.2d 628 (1973) (city councilman).

3. Durational residency requirements of one year were held constitutional in *Triano v. Mission, II*, 109 Ariz. 506, 513 P.2d 935 (Ariz.1973) (city councilman); *Cowan v. City of Aspen*, 509 P.2d 1269 (Colo.1973) (municipal offices); *Cahnmann v. Eckerty*, 40 Ill.App.3d 180, 351 N.E.2d 580 (1976), *appeal denied*, 431 U.S. 934, 97 S.Ct. 2644, 53 L.Ed.2d 252 (1977) (city alderman); *Lawrence v. Issaquah*, 84 Wash.2d 146, 524 P.2d 1347 (1974) (city councilman).

terests of affording greater voter knowledge of candidates and greater candidate knowledge of the needs of the constituency, as we did in *Gilbert v. State, supra.*

The two cases striking down a one year residency requirement are distinguishable. In *Headlee v. Franklin Co. Board of Elections,* 368 F.Supp. 999 (D.C.Ohio 1973), the court found that, because of a territorial annexation, over one-half of the village population would be unable to run until the next election if the one year residency requirement for village office was upheld, and that this was an unnecessary restriction on voter choice. There is no such factual situation in the case at bar.[4] The California Supreme Court has rejected our rationale in *Gilbert.* In *Johnson v. Hamilton,* 15 Cal.3d 461, 125 Cal.Rptr. 129, 541 P.2d 881 (1975), the court held that no compelling state interest was served by residency requirements of one year within the city and six months within the district for candidates for municipal office. The court in *Johnson* found that mass media played the major role in the education of voters. Personal contact and knowledge of the candidate by the electorate was a minor aspect. *Id.* at 886. We rejected this argument in *Gilbert,* 526 P.2d at 1135, in the context of a district of Anchorage where media access is at least as great, and perhaps greater, than in Homer. We think the California standard is inapplicable in Alaska, where there are many sparsely populated communities.

Numerous Alaskan municipalities have one year durational residency requirements for local office. For example, Juneau,[5] Anchorage,[6] Sitka,[7] Valdez,[8] and Fairbanks North Star Borough[9] all have one year residency requirements for city council. Palmer[10] has a two year residency requirement for city council, and Ketchikan[11] and Bristol Bay Borough[12] have three year residency requirements. North Slope Borough[13] has a six month residency requirement, and Unalaska[14] has a thirty day residency period. There does not appear to be any sort of a local trend toward reducing durational residency requirements for local offices.

[2] As to whether the one year residency requirement is the least restrictive means available to achieve the interests of voter and candidate education, we adhere to *Gilbert*:

> We see no viable alternative means of advancing these important interests alleged by the state. [Gilbert] suggests that these interests may be met by imposing some sort of subjective test upon potential legislators. We disagree. To create a subjective test of candidates' knowledge, understanding or character would necessarily place undue power in the hands of those who would implement such a standard. We think it better that a relative few be delayed from realizing their political aspirations for a relatively brief period than that some group of persons pass upon the fitness of all candidates before they are permitted to present themselves to the voters.

4. There was testimony during trial that Homer's growth rate is about nineteen percent per year, with 15.2% of the population in 1975 having resided in Homer less than one year and 13.5% having lived there between one and two years. Castner argues that new residents are more capable candidates "in light of their broader experience with generally more complex issues existing in other parts of the country." We are not persuaded that breadth of experience elsewhere contributes to candidate knowledge of local issues and problems.

5. Juneau Charter 33 Sec. 3.3.

6. Anchorage Municipal Code 28.10.130.

7. Sitka General Code 2.40.070.

8. Valdez Charter II, Sec. 2.2.

9. Fairbanks North Star Borough Municipal Code 2.08.030.

10. Palmer Municipal Code 2.04.040.

11. Ketchikan Charter II, Sec. 2-1.

12. Bristol Bay Borough Code of Ordinances 2.08.020.

13. North Slope Borough Charter 3.030.

14. Unalaska Code of Ordinances 10.020.

Nor can these interests be protected by relying solely upon the electoral process itself. Voters are, in a sense, "consumers" of the product portrayed by the persons they elect to office. In these days of "packaged" media candidates, they often cannot know what is in the package until they have made their selection and observed the utility of the product. In adopting their constitution, the voters of Alaska chose to protect themselves from unknown deficiencies in their candidates by imposing objective standards upon those who would hold legislative office.

We conclude that while objective tests for candidacy unavoidably place a burden upon the privilege of running for political office, the burden is both temporary and slight and is necessary to promote governmental interests which are compelling. *Gilbert*, 526 P.2d at 1136.

We affirm the decision of the superior court upholding the constitutionality of the one year durational residency requirement for candidacy for city office in Homer.

Affirmed.

CITY AND BOROUGH OF JUNEAU, a Municipal Corporation, Appellant/Cross-Appellee,

v.

COMMERCIAL UNION INSURANCE COMPANY, a Massachusetts Corporation, Appellee/Cross-Appellant.

Nos. 4040, 4041.

Supreme Court of Alaska.

Aug. 24, 1979.

City/borough brought action against insurance carrier for damages resulting from fire in school. The Superior Court, Fourth Judicial District, Warren W. Taylor, J., awarded judgment for city/borough and prejudgment interest at the rate of six percent from date of fire to date of statutory amendment of prejudgment interest rate, and eight percent from date of amendment to date of entry of judgment. City/borough appealed. The Supreme Court held that: (1) higher, amended prejudgment interest rate was not to be applied retroactively; (2) trial court did not err in awarding attorney fees to city/borough based on verdict plus prejudgment interest, rather than on verdict alone; and (3) trial court did not abuse its discretion in allowing costs to city/borough even though its notice of taxation was not timely filed.

Affirmed.

1. Interest ⇐30(3)

1976 Amendment to statute governing rate of prejudgment interest raising rate from six to eight percent was not applicable retroactively to award of damages to city/borough resulting from school fire. AS 01.10.090, 45.45.010(a).

2. Interest ⇐30(3)

Prejudgment interest is not a "remedial" or "procedural" device such as would authorize retroactive application of amended, increased rate. AS 45.45.010(a).

3. Interest ⇐39(2)

Prejudgment interest is substantive right of an injured party to allow that party to recover for economic loss occasioned by his inability to use award of damages between injury and judgment. AS 45.45.010(a).

4. Interest ⇐38(1), 39(2)

Purpose of prejudgment interest is to place an injured plaintiff in same position as if he had been compensated immediately for his loss; this result is achieved if interest is calculated at prevailing rate for period between incident causing the loss and judgment. AS 45.45.010(a).

dictum that eligibility for reduced tuition at a state university could be premised on a durational residency requirement. In support of this conclusion, the Supreme Court cited in a footnote (*id.* at 452 n. 9, 93 S.Ct. at 2236 n. 9, 37 L.Ed.2d at 72 n. 9) its affirmance of *Starns v. Malkerson*, 326 F.Supp. 234 (D.C. Minn.1970), *aff'd*, 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). In *Starns*, a three-judge district court had concluded that the University of Minnesota could condition payment of in-state tuition on a one-year durational requirement, and specifically rejected the use of the "strict scrutiny" equal protection analysis. 326 F.Supp. at 238.

The following year the Court considered the question of whether free medical care for indigents could be conditioned on a one-year residency requirement. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). The majority opinion, again authored by Justice Marshall, seems to retreat from the Court's earlier unequivocal position in *Dunn* that any durational residency requirement must be justified by a compelling state interest. The opinion suggests that durational residency requirements only impinge on the right to travel when such a requirement is used by a state to condition the right to receive "basic necessities of life" or a "fundamental political right." 415 U.S. at 259, 94 S.Ct. at 1082, 39 L.Ed.2d at 315. Only because the majority found that medical care was a basic necessity of life did it conclude that a compelling state interest had to be shown to justify the requirement.

Finally, in 1975, the Court sustained an Iowa statute that conditioned divorce on one year of residency in the state. *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Justices Marshall and Brennan noted in a dissenting opinion:

> [t]he Court .... has not only declined to apply the "compelling interest" test to this case, it has conjured up possible justifications for the State's restriction in a manner much more akin to the lenient standard we have in the past applied in analyzing equal protection challenges to business regulations.

419 U.S. at 420, 95 S.Ct. at 568, 42 L.Ed.2d at 553 (citations omitted).

To summarize, in the federal courts it now appears that laws which deny or restrict certain benefits to new residents will only be subjected to strict scrutiny when they deny "basic necessities of life" or some "fundamental political right." In retrospect, one may question whether *Shapiro* and its progeny are "right to travel" cases at all, because denial of welfare benefits or political rights to any class of people, whether newly arrived migrants or some other class, would always seem to justify strict scrutiny.

A review of our durational residency cases can be easily summarized. We have never used anything but "strict scrutiny" equal protection analysis.[6] In *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978), which was decided some two years after *Sosna v. Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975), we noted that "[w]e have never used this 'basic necessities' reasoning." 565 P.2d at 163. As recently as *Castner v. Homer*, 598 P.2d 953 (Alaska 1979), we used strict scrutiny to analyze a city ordinance imposing a one-year durational residency requirement on the right to run for an elective city office.

Although we found a compelling state interest, and sustained the ordinance in

6. *Castner v. City of Homer*, 598 P.2d 953 (Alaska 1979) (sustaining one-year durational residency requirement for right to run for city office); *Hicklin v. Orbeck*, 565 P.2d 159 (Alaska 1977), *rev'd on other grounds*, 437 U.S. 518, 57 L.Ed.2d 397 (1978) (no compelling interest in one-year waiting requirement to work on state oil and gas lease projects); *Gilbert v. State*, 526 P.2d 1131 (Alaska 1974) (compelling interest in three-year residency requirement for running for state legislature); *State v. Adams*, 522 P.2d 1125 (Alaska 1974) (no compelling interest for imposing one year of residence to bring a divorce action); *State v. Wylie*, 516 P.2d 142 (Alaska 1973) (no compelling state interest to impose one-year requirement for civil service preference); *State v. Van Dort*, 502 P.2d 453 (Alaska 1972) (no compelling state interest in seventy-five-day voting requirement).

Castner (598 P.2d at 957), it is obvious that few durational residency requirements could withstand such an analysis. In light of our holding in *State v. Erickson*, 574 P.2d 1 (Alaska 1978), we believe that it is now appropriate to reexamine our conclusion, as expressed in our prior decisions, that all durational residency requirements must necessarily trigger the highest level of equal protection scrutiny.

In *Erickson*, we noted our prior dissatisfaction with the two-tiered model of equal protection used in federal constitutional analysis. We concluded that a single test would be more appropriate, and described the functioning of that test in the following terms:

> Initially, we must look to the purpose of the statute, viewing the legislation as a whole, and the circumstances surrounding it. It must be determined that this purpose is legitimate, that it falls within the police power of the state. Examining the means used to accomplish the legislative objectives and the reasons advanced therefore, the court must then determine whether the means chosen substantially further the goals of the enactment. Finally, the state interest in the chosen means must be balanced against the nature of the constitutional right involved.

574 P.2d at 12 (footnotes omitted).

We noted that where federal constitutional questions were present which involved a suspect class or fundamental right, we would still be bound to use a test at least the equivalent in severity as the compelling governmental interest or strict scrutiny test used by the United States Supreme Court. When federal strict scrutiny was not required, however, we would be free to adopt our own test in gauging the importance of the right to equal treatment under the Alaska constitution. *Id.* at 11–12.

[2] We conclude now that durational residency requirements should be measured against the test discussed in *Erickson*. When a law conditions the receipt of some right or benefit upon a period of residency, we will balance the importance of the denial of the right or benefit against those legitimate government objectives which make it justifiable to classify people on the basis of their length of residency. As we stated in *Erickson*, a burden will be placed on the state to show that a classification "has a fair and substantial relation to a legitimate governmental objective," and that a greater or lesser burden to make such a showing will be based on the nature of the right or benefit involved. *State v. Erickson*, 574 P.2d 1, 11–12 (Alaska 1978).

[3] Freedom from disparate taxation is not a federally protected fundamental right for the purpose of equal protection analysis under the fourteenth amendment.[7] Therefore, we shall analyze the tax law under our general standard of equal protection discussed above.

III. The Tax Exemption System under the Alaska Equal Protection Clause.

[4] Under *Erickson*, the beginning of our analysis is an examination of the legitimacy of the purposes of the enactment. The statute does not contain a statement of purposes, but in its brief the state has summarized what it believes to be the purpose of a selective, rather than a total, repeal of the income tax law. We have rearranged and reworded the statement of purposes slightly from the text of the state's brief:

(1) the plan should keep the state's income tax audit and collection staff intact;

(2) the plan should not saddle individuals with an empty and burdensome annual filing requirement;

(3) the revenue collection bureaucracy should be in proportion in size and cost to the amount of revenue collected;

(4) the plan should not redistribute the income tax burden so that it falls only on the very highest income earners, but it

7. *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509, 57 S.Ct. 868, 872, 81 L.Ed. 1245, 1253 (1937) ("Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation").

Alaska State Legislature

Senate

State Affairs Committee

Official Business

Vic Fischer, Chairman
Mike Colletta, Vice-Chairman
Brad Bradley
Dick Eiason
Terry Stimson

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4954
(907) 465-4955

RECEIVED
MAR 05 1981

M E M O R A N D U M

TO: SENATOR PAT RODEY

FROM: SENATOR VIC FISCHER VF

DATE: MARCH 4, 1981

RE: SB 165, Constitutional Convention

The Judiciary Committee will shortly receive CSSB 165, providing for a Constitutional Convention in case voters approve a call at the 1982 or a subsequent referendum. I would like to bring several items to your attention.

Similar legislation was enacted last year but vetoed by the Governor due to composition of the proposed preparatory commission. Brian Rogers suggested we get the basic enabling legislation enacted and deal with the preparatory commission separately.

My preference is to include the commission as part of the basic convention legislation, though not at the expense of jeopardizing the measure. I have therefore requested the advice of the Attorney General on commission composition that might be acceptable to the Administration; see attached memo of February 26.

I would suggest that you proceed with CSSB 165 without the preparatory commission. If we get something back from Will Condon in time for inclusion by your committee, fine. Otherwise we can deal with the matter in the House, if we all conclude that we can attach the appropriate provisions to the bill. In lieu of that we will proceed with separate legislation after hearing from Condon.

The second issue I would like to bring to your attention pertains to a fiscal note. The Division of Elections provided us with a fiscal note that showed no expenditures in FY '81 and '82, with $1.1 million in FY '83, $1.2 million in FY '84. These amounts would cover costs of special elections for delegate selection and ratification of any amendments or revisions proposed by a

convention, if one were held. The fiscal note is predicated on a positive vote on issuing a convention call.

Both Brian and I feel very strongly that the Constitutional Convention bill now under consideration has no costs that would result from its enactment. Any costs would be ascribable to the convention referendum itself, but not CSSB 165. If the people approve a convention call total costs will be far in excess of $2.6 million. If the people reject a convention, there is no cost whatsoever. In either case, it's the action of the people on the referendum and not legislative action on the current bill to which costs should be ascribed. Accordingly, CSSB 165 carries a zero fiscal note from the State Affairs Committee.

In view of the zero fiscal note, both Brian and I feel that referral to Finance Committee is unnecessary. We will deal with that when the bill comes out of your committee.

Third is an issue that just occurred to me. It might be good to add a provision to the bill that the lieutenant governor include a fiscal note for the convention in the election pamphlet for the election at which the constitutional convention question is put to the voters. The fiscal note should cover costs of delegate election, the convention itself, ratification election, and other expenses ascribable to a convention if one were held. Unless an authoritative figure is given, we are liable to have a big argument over potential expenses of a convention...If you concur, Judiciary might add such a provision.

Thanks for your consideration of these issues.

cc: Rep. Brian Rogers

Alaska State Legislature

Senate

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Wilson Condon, Attorney General

FROM: Sen. Vic Fischer

DATE: Feb. 26, 1981

SUBJ: Constitutional Convention

Your assistance is requested in clarifying how legal and policy issues on this subject can be resolved.

PREPARATORY COMMISSION

The Senate State Affairs Committee has considered SB 165, providing standby legislation in case Alaska voters approve a constitutional convention in the 1982 referendum or at a subsequent time. The bill is essentially the same as HB 723 approved by the Legislature last year but vetoed by the Governor.

The Governor's veto was based on the composition of the preparatory commission, which was to have included appointees of the Governor, Speaker of the House, President of the Senate, and Chief Justice of the Supreme Court. The appointive structure was seen as a violation of the separation of powers concept.

SB 165 does not include provision for a preparatory commission so as to avoid raising the appointment method issue. We now have the option of amending SB 165 to include provision for a preparatory commission, dealing with the matter in separate legislation to make SB 165 "veto proof", or making no provision for convention preparation. The latter course is to me extremely undesirable, as experience has shown that lack of adequate preparation can lead to disastrous constitutional conventions.

Based on the scheduling of a convention established by SB 165 in case of a positive convention vote by the people, a preparatory commission would have to be activated as soon as possible after the referendum to assure that preparatory work is carried out in timely fashion. Therefore, necessary legislation has

to be enacted by this Legislature, preferably during this session.

State Affairs Committee discussion brought out the opinion that a constitutional convention is the highest legislative process of the people of the state. Neither the executive, legislature, or judiciary can limit the scope of this law making process.

At the same time, someone has to provide for the constitutional convention preparatory process. Our question now is who should be involved in doing that.

It appears clear that the Legislature could establish a preparatory commission, with appointments made by the House Speaker, Senate President, or others within the Legislature.

The Legislature could also provide for a commission, the members of which would be appointed by the Governor.

My main question is whether you would find any kind of joint executive-legislative appointment legally acceptable, particularly in view of the constitutional convention being essentially a legislative function. I pose the question because of my belief that a convention preparatory commission performs a crucial function and that its composition is most important to an effective preparatory process.

I would very much appreciate your comments and suggestions on this issue at the very earlies time.

Sen. Vic Fischer

/lf

cc: Sen. Rodey, Chair, Judiciary Committee

Rep. Rogers, Chair, Constitutional Convention Committee

Alaska State Legislature

Senate

Committee on State Affairs

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

Feb. 24, 1981 — Behrends Bldg.

1:30 p.m. — First Floor

MEMBERS PRESENT: SENATOR FISCHER, CHAIR
SENATOR ELIASON
SENATOR STIMSON
SENATOR COLLETTA

AGENDA: SENATE BILL 174 "An Act making a supplemental appropriation to the Alaska Power Authority for the power production cost assistance program; and providing for an effective date."

SENATE BILL 165 "An Act relating to constitutional conventions; and providing for an effective date."

The meeting was called to order by Senator Fischer at 1:30 p.m.; the first order of business was Senate Bill 174 sponsored by Senator Frank Ferguson, introduced at the request of the Nome utilities.

Senator Ferguson provided a brief overview of the legislation and suggested that the bill be amended to reflect an appropriation in the amount of $2.54 million for continuation of the study of the Susitna Dam.

Eric P. Yould, Executive Director of the Alaska Power Authority, testified in support of the bill, and stated that the additional funding is needed to insure that the power production cost assistance program is fully funded through the present fiscal year. He stated that the approximately $1.4 million with which the program commenced operations was one half of the original appropriation due to an executive veto. The committee asked Eric Yould about the need and present effectiveness of the program, and requested further information.

It was suggested in the discussion that $50,000 was needed for a feasibility study for the Takatz Lake project.

The committee agreed to a committee substitute for SB 174 with the addition of $2.54 million for the Susitna Dam study and $50,000 for the Takatz Lake study.

The committee members then took up the next item on the agenda: Senate Bill 165, introduced by the Rules Committee at the request of the Legislative Council.

Representative Brian Rogers, chair of the Constitutional Convention Committee, testified on SB 165, presenting a section by section analysis of the bill. He maintains that the bill is necessary because it provides a framework for setting up the process of a constitutional convention. He further stated that it was necessary to get such legislation on the books this year before it becomes politicized in an election year. Rep. Rogers said that the studies of the Constitutional Convention committee have shown that if a lot of groundwork, or preparatory work, for a constitutional convention is not done in the beginning, the convention can become a total disaster. He then reviewed the proposed amendments submitted by the Director of the Division of Elections.

Chairman Fischer proposed that SB 165 be revised to reflect lack of explicitly sexual pronouns (be made sex-neutral with respect to pronouns).

Discussion arose on that section of the bill which specifies College, Alaska, as the site where the constitutional convention is to take place. An amendment was proposed to delete this provision, and insert language to provide for the site being specified in the call issued by the Lt. Governor; the amendment was adopted by the members of the committee.

Patty Ann Polley, Director of the Division of Elections, testified in favor of SB 165. She provided an overview of the amendments proposed by her office. She also gave an explanation for her fiscal note.

The committee was not in agreement with the contents of Patty Ann Polley's fical note and agreed to submit a fiscal note prepared by the committee members.

Committee members decided to take up the committee substitute for SB 165 at the next meeting; they also agreed to cancel the Thursday meeting due to schedule conflicts of members.

The meeting was adjourned by Chairman Fischer at 3:03 p.m..

WITNESSES FOR
SENATE STATE AFFAIRS MEETING

SB 174 2/24/81
SB 165

Name	Address/Phone	Representing
Eric P. Yould	333 W 4th Ave Suite 31	Alaska Power Authority
Brian Rogers	Pouch V	D. 3trict 20
Patty Ann Polley	Pouch A F, Juneau 586-6191	Division of Elections

Alaska State Legislature

Senate

Committee on State Affairs

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 3, 1981 — Behrends Bldg.

1:30 p.m. — First Floor

MEMBERS PRESENT: SENATOR FISCHER, CHAIR
SENATOR COLLETTA
SENATOR ELIASON
SENATOR BRADLEY
SENATOR STIMSON

AGENDA:

SENATE BILL 82 "An Act repealing the campaign contribution tax credit for individuals; and providing for an effective date."

SENATE BILL 165 "An Act relating to constitutional conventions; and providing for an effective date."

SENATE BILL 90 "An Act relating to privacy and public information and changing Rule 65 of the Alaska Supreme Court Rules of Civil Procedure."

SENATE BILL 72 "An Act relating to veterans and public records."

HOUSE JOINT RESOLUTION 6 "Requesting the U. S. government to honor military personnel still listed as missing in action from the Vietnam war at the Tomb of the Unknown Soldier in the national cemetery at Arlington, Virginia."

Chairman Fischer called the meeting to order at 1:40 with all members present except Senator Stimson, who had been detained at a meeting. Testimony was invited on House Joint Resolution 6, sponsored by Rep. Pappy Moss.

Representative "Pappy" Moss presented a brief overview of the resolution, and stated that its purpose was to recognize the Vietnam MIAs (missing in action). In that conflict more than 50,000 American lives were lost, and 2,500 were presumed dead, including three Alaskans. The purpose of the resolution is to honor those Vietnam veterans.

There was some committee discussion. Senator Colletta inquired if there was not already a monument: the Tomb of the Unknown Soldier. Senator Bradley responded that the Tomb was erected after WWI, and does not specify any particular war or conflict.

Senator Colletta inquired, "Why not suggest an MIA monument for all U. S. soldiers?" in response to which Rep. Moss pointed out that there has been very little recognition for Vietnam vets.

There being no further questions or comment, committee members approved Senator Bradley's motion that the resolution be passed out with individual recommendations.

Senate Bill 82, sponsored by Senator Colletta, was the next item to be addressed by the committee members.

Senator Colletta opened testimony on the bill by delivering an overview of SB 82. He described it as "an item that occurred last year during Free Conference" as it pertained to repeal of personal income taxes and the prospect of constitutional challenges to aspects of repeal. Thus "credits" were addressed and supplemental state credits developed.

Under the provisions of SB 82 a Federal deduction is still available; since there is no state income tax, however, Senator Colletta sees the present credit as a "back door entry to publicly financed campaigns", an area he feels requires extensive public hearings, and a policy he generally does not support.

In response to the question, "Was it your intent to repeal the tax credit refund for day care?" Senator Colletta responded that SB 82 did not, but that Section 2 of the Governor's bill does. Upon further investigation it became clear that SB 82, as introduced, does repeal the day care tax credit. Senator Bradley suggested that perhaps the title of the bill should be amended to reflect this repeal.

Senator Eliason expressed the opinion that some aspects of public financing of campaigns are good, and suggested that rather than total repeal, the focus of the legislation could be be narrowed a bit. He stated that there was a need for some kind of public participation and suggested that the question of organized groups might be addressed differently than contributions to individual campaigns. Senator Colletta reiterated his personal opposition to public financing of campaigns.

Denna Cline, of the Department of Revenue, provided further testimony on SB 82, stating that the administration supports SB 82. She presented data relating to campaign contributions (see attached sheet). In response to the question, "Why does the Governor want child care credit repeal?" Denna stated that she would rather not speak for the Governor, and suggested that the Governor felt that there are alternative ways of approaching that issue in light of the fact we no longer have income tax for individuals. Senator Colletta agreed that there must be a better way to provide a child care subsidy, as the present system insures that those with greatest need get the

lowest amount of credit.

With respect to Administration's position on the cost of credits, Denna Cline stated that it costs about the same to provide both or either of the credits under discussion.

Senator Bradley pointed out that the section under discussion includes not only child care, but other forms of care as well, such as household and dependent care assistance.
Senator Eliason questioned the January 1st effective date of the bill, and pointed out a potential problem of those persons who have made contributions in good faith not getting refunds. Further committee discussion centered around the various groups of candidates affected, such as candidates in a municipal election.

Chairman Fischer expressed a preference for dealing with alternate methods of providing assistance in conjunction with consideration of the repeal. Senator Bradley favored changing the title of SB 82 and moving it out of committee. Senator Colletta expressed a desire to clarify the repealer section and leave the political campaign contribution portion in the repealer, and stated that exploring alternative language to clean up the section on political campaign contributions (as suggested by the Chair) would be a major undertaking which involved finding the shortcomings of the Federal act.

The bill was held over for further consideration by the committee.

Senate bill 165, concerning constitutional conventions, was next addressed by the committee. Chairman Fischer announced that he was waiting for an answer from the Attorney General on the question of a preparatory commission. The Judiciary Committee, he said, could deal with the response. He presented committee members with a re-draft of the legislation.

Senator Colletta suggested changing the language of the bill to reflect a clear choice on the part of the delegates of a site for the convention.

Senator Eliason suggested that following the election of delegates that they assemble in the Capital to have orientation and select a site, and to perform some basic organization functions.

Senator Fischer asked if committee members would like to hold the measure over until the next meeting. Senator Stimson moved that the above-mentioned changes be made and the bill be moved out. As there was no objection, it was so ordered.

The committee took up the committee substitute for SB 90, and the committee report/analysis was presented to members for approval. Committee members carried a motion to pass the bill out with individual recommendations, and send it on to Judiciary.

The final item on the agenda, SSSB 72, received final consideration by the committee. Senator Bradley pointed out that the section which had created the problem, Section 2, had been re-written. The Bureau of Vital Statistics was to keep a record of separation reports for veterans. The last line of the bill had been changed because it was "superfluous" and the sponsor substitute makes is clear that the program is a voluntary one, thus alleviating any problem of invasion of privacy. No additional personnel were required to implement the legislation; documents would merely be kept on file at an additional place.

Chairman Fischer moved that the bill be passed out as amended. There being no objection, it was so ordered.

The meeting adjourned at 3:00.

1980 Income Tax History File statistics

As of 3/3/81

		Ave
Total Refunds	43,782	$365.31
Total Refund Amount	$15,993,917.33	
Total 79 CCC	640	$46.43
Total 79 CCC Amount	$29,713.82	
Total 80 CCC	836	$49.24
Total 80 CCC Amount	$41 162.39	
Total 79 PCC	1,631	$44.55
Total 79 PCC Amount	$72 659.11	
Total 80 PCC	3619	$43.84
Total 80 PCC Amount	158,660.53	

WITNESSES FOR
SENATE STATE AFFAIRS COMMITTEE

DATE: 3-3-81

Name	Address/Phone	Representing
Donna Cline	Revenue 465-2301	

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR
TERRY MILLER, LT. GOV.

OFFICE OF THE LT. GOVERNOR

DIVISION OF ELECTIONS

POUCH AF—JUNEAU 99811

February 13, 1981

The Honorable Vic Fischer
Chairman
State Affairs Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

The Division of Elections has reviewed Senate Bill 165 and has prepared and attached a fiscal note and suggested amendments to the bill.

The election code has been reviewed and revised extensively over the past two years. As the review process has occurred, election procedures have changed. Based on these revisions, I have attached suggested amendments that cover two general areas:

1. Assuming that voters at the 1982 General Election have approved the holding of a convention, candidates must file a declaration of candidacy. I am suggesting that those procedures be consistent with those for legislative and statewide offices.

2. The specific duties for the conduct of an election are assigned to the Director of Elections, with the Lieutenant Governor retaining final authority.

Sincerely,

Patty Ann Polley
Director
Division of Elections

PAP:ko

Enclosures

SUGGESTED AMENDMENTS TO SENATE BILL 165

1. Page 1, line 13, following "amendment" insert "is"

2. Page 3, line 5, change "lieutenant governor" to "director of elections"

   line 27, change "lieutenant governor" to "director of elections"

3. Page 4, line 5, remove "to the lieutenant governor"

   line 8, remove "to the lieutenant governor"

   line 14, remove "to the lieutenant governor"

   line 20, remove "by the lieutenant governor"

   line 26, insert a new section (c) to read as follows:

   "A candidate for delegate to the constitutional convention shall file either with the director or an election supervisor. If the candidate files his declaration with an election supervisor, the election supervisor shall immediately forward the declaration to the director."

   line 26, change "(c)" to "(d)"

   lines 26-29 remove first sentence and insert the following:

   "If the declaration filed under (a)(3) of this section is not received within seven calendar days, the candidate shall be notified of non-receipt."

4. Page 5, line 7, remove "lieutenant governor" and insert "director of elections"

5. Set December 15 as the first day that a declaration of candidacy may be filed.

6. Question: Do you want legislators to serve as delegates to the convention?

7. Question: Shall we add requirement for an Election Pamphlet for delegate selection election and also one for ratification election? (Fiscal note includes this.)

8. Question: Is the required APOC statement (Sec. 7, AS 39.50.020(b)) necessary at the time of filing a declaration for delegate candidates?

9. Question: Should we remove Sec. 15.50.900 delegation by lieutenant governor in lieu of these amendments?

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 165
Title "An Act relating to constitutional conventions; and providing for an effective date"
Requested by Senate State Affairs Date February 11, 1981

II. FISCAL DETAIL
Agency Affected Office of the Governor
Program Category Affected Legislative and Elective Operations
BRU, Program, or Subprogram(s) Affected Division of Elections
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	-0-	-0-	199.6	223.6	-0-	-0-
200 TRAVEL	-0-	-0-	27.2	30.5	-0-	-0-
300 CONTRACTUAL	-0-	-0-	863.2	966.8	-0-	-0-
400 COMMODITIES	-0-	-0-	34.4	38.5	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	1124.4	1259.4	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	1124.4	1259.4	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY			5.5	5.5		

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Assume:

1) FY 81 - no additional cost
2) FY 82 - no additional cost
3) FY 83
   a) Full cost of special election for Constitutional Convention delegate selection;
   b) Full cost of Official Election Pamphlet pertaining to special election in four regional issues (at request of Senate State Affairs);
   c) Preparation costs for ratification election to be held early in FY 84
4) FY 84
   a) Full cost of ratification election;
   b) Full cost of Official Election Pamphlet in four regional issues pertaining to constitutional amendment ratification (at request of Senate State Affairs);
   c) 12% inflation over FY 83

IV. DATE February 13, 1981 PREPARED BY Danith D. Anderson Danith D. Anderson
AGENCY Division of Elections
PHONE 586-6181

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev 12/80

SB 165 — Fiscal Note Supplementary Information

(100) Personal Services

Includes overtime (average of $20,000/month for 1980 elections plus 12% inflation) for 3-month period; cost of 22 total temporary employees (19 at Range 8 and 3 at Range 10) for Anchorage, Fairbanks, Juneau and Nome offices for 3-month period ($1,393/month x 19 x 3) + ($1,564/month x 3 x 3); cost of Election Pamphlet and public information staff (based on 1980 costs and 12% inflation).

(200) Travel

Includes in-state airfare for public information officer and election supervisor coordination; travel for election pamphlet staff (based on 1980 costs and 12% inflation); travel for absentee voting officials for pipeline assistance, data processing systems personnel ($350/airfare + $500/trip x 32 trips).

(300) Contractual Services (Total of $863,200)

(310) Includes Zenith line, long-distance and telegram service, postage (82.2 with 40.0 allocated for Election Pamphlet).

(320) Printing and Advertising Including cost of printing ballots (80.0) (25 sets of data vote ballots, 15 sets of paper ballots, assuming 40 election districts), declarations of candidacy forms, tally books, registers, notices of election, certificates and return booklets; plus Election Pamphlet printing costs (based on 1980 costs with 12% inflation — 165.0) and general advertising.

(330) Rents and Leases Additional office space in Juneau and Anchorage for election related activities.

(360) Equipment Rental Includes 10 Mag Card II typewriters at $300. each x 3 months = $9,000; data processing equipment rental (card reader, 6 display stations, 4 printers); copier expense.

(380) Professional Services Including data processing consulting (20.0)

(390) Other fees and expenses (460.0)
Election Night Expense (100.0)
Miscellaneous (20.0)
Election Board Payments (340.0)

(400) Commodities Includes all election-related materials (31.9) for 500 precincts, election night activities, temporary employees, absentee voting officials (50 total) and election pamphlet staff (2.5).

(500) Equipment No additional equipment expenses required.

SECTIONAL ANALYSIS OF SB 165

RELATING TO CONSTITUTIONAL CONVENTION

Section 1: Directs the Lt. Governor to place either constitutional amendments by the Legislature or by a Constitutional Convention on the ballot for the next statewide general election.

Removes the 120 day requirement for placing amendments proposed by a constitutional convention.

Section 2: Spells out how to place question of whether or not to have a constitutional convention every 10 years, on the ballot.

Section 3: Provides that if a majority of the votes are in the affirmative for holding a convention, that the Lt. Governor shall provide for a convention under the provisions of this bill.

Section 4(a): 15.50.091: Sets the date for calling for a special election for selecting delegates. Third Tuesday of May following the vote on the question.

Section 4 (b): Provides if a convention is called by the Legislature the date for selection of delegates will be set out in the call.

15.50.101: Provides for the number of delegates; 60 from same election districts as provided for Legislators and 5 at large.

15.50.111: Provides that the 60 shall be elected from the same districts as each house of the legislature, according to the apportionment schedule in effect at the time the election is held.

15.50.120: Sets out the qualifications of the delegates:

(a) Registered voter, three year resident of the state and one year resident in the district from which the delegate is to be selected.

(b) At large delegate shall be a registered voter of the state who has been a resident of the state for the three years preceeding the first day of the convention.

15.50.130: Declaration and withdrawal of candidacy:

(a) Basically the same manner as a candidate for the Legislature except there are no provisions for a partisan election.

(b) Candidates must withdraw 40 days before election in order to have name removed from the ballot.

15.50.140: 1. Manner and date of filing declaration:

(a) Must file at or before 5:00 p.m. local time on February 15 of the year in which the special election is held for the office.

(b) Provides for filing by telegram.

(c) Provides for filing by registered mail, postmarked at or before 5:00 p.m. local time February 15.

2. Provides for extension if February 15 falls on a Saturday or Sunday.

3. Sets forth what a person must do, as follow-up if the filing is by telegram.

15.50.150: Provides for a nonpartisan election.

15.50.160: Requires the Lt. Governor to place the names of qualified candidates on the special election ballot.

15.50.170: Ballots: Provides that a separate ballot shall be prepared for each election district. The ballot shall contain the names of the candidates from the house district, senate district and the candidates at large.

15.50.180: Certification of election: Provides that the Lt. Governor shall certify the person receiving the largest number of votes for the office for which he was a candidate, as elected.

Section 5: Adds a new section to A.S. 15.50, Article 9:

15.50.900: Allows the Lt. Governor to delegate the duties imposed by this Chapter to the director.

Section 6: Adds a new chapter to A.S. 44:

Chapter 90 Constitutional Convention:

44.90.010: Call:

Provides that within 60 days after an affirmative vote to call a constitutional convention or within 60 days of the calling of a convention by the Legislature if specific appropriations have not been made for the special election for delegates, the Lt. Governor shall include in his call an appropriation which he determines adequate. He shall deliver a copy of the call to the Commissioner of Revenue.

The Commissioner shall establish special accounts within the general fund for which money for the special election can be drawn. The monies shall be dispersed for the special election, the work of the convention, and the ratification election following the convention.

44.90.020: Establishes the location of the convention and the convening time:

University of Alaska at College, Alaska at 10:00 a.m. the second Monday in September following the special election or at a time specified in the call.

Provides that the convention shall meet for not more than 90 days, but may at its discretion recess for 15 days or less for public hearings.

44.90.030: Provides that the Governor shall open and preside until temporary officers are selected.

44.90.040: Provides that all meetings are open to the public unless an executive session is called under provisions set forth in Alaska Statutes.

44.90.050: Provides that the convention is the judge of the qualification and election of its members, may elect officers, prescribe their functions, powers and duties and may make the rules to conduct its business; may request and shall receive assistance and information from any state agency, may employ various staff and consultants and enter into contracts; have plenary power to revise the constitution subject only to ratification by the people.

44.90.060: Provides if a convention submits amendments or revisions to the constitution the Lt. Governor shall call a special election for the purpose of ratifying the amendments or revisions not less than 40 nor more than 120 days after the adjournment of the constitutional convention.

44.90.070: Immunities: Provides immunities similar to legislative immunities.

44.90.080: Provides for expenses, travel and per diem allowances as a Legislator, although no salaries.

44.90.090: Provides that the Governor shall appoint a qualified person to fill any vacancies.

Sections 7 -14: Provides for disclosure, conflict of interest, and lobbying activities similar to the requirements for Boards and Commissions, the Legislature and the Administration.

Section 15: Repeals the sections dealing with how a constitutional convention shall be called.

Section 16: Effective date.

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL 165

Title "An Act relating to constitutional conventions; providing for eff. date.

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected _____

Program Category Affected _____

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) SB 165 is for an enabling act. It provides a standby process in case voters or the Legislature approve a constitutional convention call by referendum. The next referendum is in November 1982. If the voters approve a convention call, major expenses will ensue. If the voters oppose a convention, there will be no costs. In either case, the convention enabling legislation would, unless changed by law, apply to future referenda and convention calls.

Possible costs of a convention -- delegate election, constitution revision process, ratification election, and other expenses -- are ascribable to the referenda or a legislative call and not to this bill. Essentially the same expenditures will occur in case of a convention call even if this bill is not enacted.

Accordingly, the fiscal note for this bill is zero.

IV. DATE March 1, 1981 PREPARED BY Sen. Fischer, Chairman

AGENCY Senate State Affairs Committee

PHONE 465-4954

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

001 (Rev. 12/80

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 10, 1981

Hon. Vic Fischer
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Constitutional convention
preparatory commission
Our file: J-66-557-81

Dear Senator Fischer:

You have asked whether we can find any kind of joint executive-legislative appointment of a commission to prepare for a constitutional convention to be legally acceptable. We regret to advise that we cannot.

There are at least two cases, each of which includes a compelling dissent, which hold that a legislator's serving as a delegate to a constitutional convention is not holding a dual office. Harvey v. Ridgeway, 450 S.W.2d 281 (Ark. 1970); Bd. of Supervisors of Elections v. Attorney General, 229 A.2d 388 (Md. 1967). Both cases ignore the case authority in their own and other states in arriving at their decisions. Accordingly, neither is persuasive. Our own court takes a broad view on what is an office. Larson v. State, 564 P.2d 356 (Alaska 1977). And the cases uniformly hold that an office is "'a public charge or employment, the duties of which are prescribed by law, and he who performs the duties is an officer.'" State v. Dunn, 496 S.W.2d 480, 490 (Tenn. 1973), quoting from State v. Bratton, 253 S.W. 705 (Tenn. 1923). See also Warwick v. State ex rel. Chance, 548 P.2d 384 (Alaska 1976); Begich v. Jefferson, 441 P.2d 27 (Alaska 1968)(prohibition against dual-office holding literally applied). The Alaska Constitution expressly makes employment by or election to a constitutional convention an exception from the prohibition against legislators' holding dual office. Alaska Const., art. II, § 5. In Begich, the court stated that these (and other) express exceptions in the constitution necessarily result in the prohibition's extending to all other offices. 441 P.2d at 30-33.

It might be argued that legislative appointees to the preparatory commission are employees of the convention.

However, while the legislature is empowered to made provision for the convention, "by law," Alaska Const., art. XIII, § 3, the constitution does not make an exception for the legislature to appoint either its members or its agents to be the officers or employees of the convention or for either to serve on a commission appointed by the legislature in whole or in part. Absent constitutional provision to the contrary, the chief executive is the appointing authority for those charged with carrying out a law. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976).

Either on an informal basis or on a basis formalized by law, resolution, or interbranch agreement, the agencies of the two branches -- including duly established permanent or ad hoc interim committees -- can certainly cooperate in studies and gathering information to prepare for a convention. So too, the legislature, through existing or duly established interim committees can study the needs for constitutional reformation. But the legislature cannot write a public law and then appoint a commission of its own members or agents to carry it out. Book v. State Office Bldg. Comm'n, 149 N.E.2d 273 (Ind. 1958).

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: Rodger W. Pegues
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SENATE BILL 165

Title "An Act relating to constitutional conventions; providing for eff. dat

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected _____

Program Category Affected _____

BRU, Program, or Subprogram(s) Affected _____

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						
	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III) SB 165 is for an enabling act. It provides a standby process in case voters or the Legislature approve a constitutional convention call by referendum. The next referendum is in November 1982. If the voters approve a convention call, major expenses will ensue. If the voters oppose a convention, there will be no costs. In either case, the convention enabling legislation would, unless changed by law, apply to future referenda and convention calls.

Possible costs of a convention -- delegate election, constitution revision process, ratification election, and other expenses -- are ascribable to the referenda or a legislative call and not to this bill. Essentially the same expenditures will occur in case of a convention call even if this bill is not enacted.

Accordingly, the fiscal note for this bill is zero.

IV. DATE March 1, 1981 PREPARED BY Sen. Fischer, Chairman

AGENCY Senate State Affairs Committee

PHONE 465-4954

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

001 (Rev. 12/80

ENABLING ACT FOR AN

ALASKA CONSTITUTIONAL CONVENTION

Prepared by:

GUY A. VAN DOREN,
ADMINISTRATIVE ASSISTANT
CONSTITUTIONAL CONVENTION COMMITTEE

1981

INTRODUCTION

to

ENABLING ACT

In preparation for a constitutional convention, one of the first things that the Legislature must do is pass legislation providing the basis for establishing the convention. Great care should be taken in writing this act for its purpose is to enable this convention to get under way, not to control the convention. No better word of warning on this score has come than that from the Judiciary Committee of the New York Convention of 1894:

> "It is of the greatest importance that a body chosen by the people of this state to revise the organic law of this state should be as free from interference from the several departments of government as the legislative executive and judiciary are from interference by each other. Unless this were so, the will of the people might easily be nullified by the existing judiciary or legislature. Should the latter attempt to enact a law prohibiting the constitutional convention from restricting

the existing power of the legislature the act would be at once be recognized as an unwanted invasion of the rights of the people." [1]

1. Quoted in Walter F. Dodd, "The Revision and Amendment of State Constitutions" (Baltimore, The John Hopkins Press, 1910), pp 79 - 80.

The purpose of an enabling act is to facilitate the selection of delegates and the operation of the convention, nothing more. The following items are suggested as matters which must be settled before the convention can get under way. Decision on the following subjects must be made:

I. Selection of delegates:
   - A. Number
   - B. Qualifications
   - C. Basis of thier selection (district, at large, etc.)
   - D. Method of their nomination an/or election
   - E. Date of the election
   - F. Administration of the election
   - G. Method of filling vacancies

II. Date and procedure of convening the delegates

III. Site of the Convention

IV. Provision for pre-convention planning and accumulation of materials

V. Appropriation (Can be a separate bill)
   - A. Amount adequate to finance all convention needs, including official pre-convention activities
   - B. Post-convention activities
   - C. Accounting practices

VI. Compensation of delegates

A. Basis of payment, per diem, monthly or flat amount for the whole convention

B. Amount of expenses allowed, if any, and for what purposes

C. Any special compensation for offices

The above has usually been sufficient. Three other matters, however, might be dealt with. These should be considered inherent powers of a convention, but, if there is any doubt or if there is the possibility that critics may seek to exploit the fact of their absence from the enabling act, then they should be included.

VII. Authority to require any officer of the state to furnish information or to appear before the convention or any committee thereof (this includes the authority to seek opinions from the attorney general or other legal officer of the state;

VIII. Authority to use the facilities of the state or any local government when such use is not disruptive of regular governmental activities. (This becomes particularly important if hearings by committees are conducted regionally);

IX. A schedule for the convention's work

A. Provisions for a recess during the life of the convention

B. Dates of the completion of the convention's work

C. Dates for submission of the convention's proposal to the people

X. Immunity clause

The enabling act need not go deeply into matters of organization, procedure and personnel and generally should avoid statements that may hamper the convention in carrying out its assigned functions. The convention should be free to determine how it will organize and manage itself.

In the areas of personnel and materials, the convention should have full control over its needs. The power to hire and fire personnel and within its own budgetary limits, their rate of compensation, as well as the power to purchase material and equipment and to contract for services falls in this category. The convention needs to be free to seek its personnel where it wants. It should not be required to borrow its staff from existing state agencies, nor use existing facilities. No compromise should be made which will in any sense make the convention beholden to anyone outside itself. If the convention chooses to borrow state personnel for its staff, or to use the legislative council or the attorney general for assistance and advice, it may do so. But to require the convention to use these sources is to give an external element a role in the convention. A role potentially detrimental to the objectivity which the convention seeks to achieve.

1. Delegate selection: The first Alaska Constitutional Convention in 1955-56 had 55 delegates (the number of delegates who drafted the United States Constitution in 1787).

Unless otherwise provided by law, Article XII Sec. 3 requires that a call for a constitutional convention shall conform as nearly as possible to the Act, calling the Alaska Constitutional Convention of 1955 including but not limited to, number of members, districts, election and certification of delegates.

In 1955, delegates were elected on a three level apportionment system, seven delegates were elected at large; thirty-three were elected at large within four judicial divisions; and fifteen came from newly delineated single delegate districts.

HB 117, introduced in 1971, provided for 65 delegates. Sixty delegates were to be apportioned among the election districts of both houses of the Legislature in accordance with reapportionment, pursuant to the 1970 U.S. Census. Five delegates were to be selected on a statewide basis.

In view of the 1980 Census, it can be assumed that delegate selection will be on the basis of the 1981 apportionment plan, and that any enabling legislation should contain a provision that delegates will be selected on the basis of the new apportionment plan. The use of the 60 delegates simplifies

the job of providing a basis for delegate elections. Having five delegates elected from the state at large will provide individuals of broader experience and familiarity with conditions throughout the state.

The enabling act should stipulate that the election of delegates be non-partisan and that any registered voter who has resided in the state and in the district from which he/she is running for the same period of time required of a candidate for the Legislature, is eligible.

The method of election should be a single special election with the person receiving the largest number of votes being elected as the delegate. The only problem with this is that if a district has a large number of delegates, one person may win by a small majority or by a very small percentage of the total vote. The only solution to this problem would be a run-off, but history has shown in other states that very few people vote in a run-off of this type and it can be expensive.

The date of the special election should be during an off-general-election year and should be held early enough in order that there will be sufficient time between the election of delegates and the convening of the convention for the delegates to familiarize themselves with the issues and what they are intending to accomplish. There also should be enough time to allow staff to prepare for the convention and complete the delegate materials.

The administration of the election should be carried out by the Division of Elections under the supervision of the Lt. Governor.

HB 117 required a nominating petititon to be filed with the Lt. Governor consisting of not less than 50 legally qualified voters of an election district based on a house district, 100 legally qualified voters of an election district based on a senate district and 1,000 signatures for candidates seeking election on a statewide basis. The petition of a candidate seeking election for the state at large shall be subscribed by the signatures of at least 25 qualified voters from each of the senate election districts.

2. Date and Procedure of Convening the Delegates: As with the election for delegates, there should be enough time before the convening of the convention to allow delegates to familiarize themselves with what is ahead and to have an orientation session. The date of convening should also be early enough for a 90 day session and so that the convention will not be meeting simultaneously with the legislature.

In most states, the Governor convenes the convention and then turns the convention over to the temporary presiding officer. In some states, the Lt. Governor or the Secretary of State opens the convention, but usually the Governor has done this.

Most experts in constitutional conventions have recommended that staff develop a temporary set of rules under which the convention can convene until permanent rules can be adopted by the delegates.

Provision for pre-convention planning and the accumulation of materials: SB 723 which passed both houses of the Legislature in 1980, but was vetoed by the Governor, included a provision for the establishment of a constitutional convention commission made up of persons appointed by the Governor, Legislature, and the Chief Justice of the Supreme Court.

In his veto message, the Governor cited the creation of this commission as one of the reasons he vetoed the bill, claiming that the make-up of the commission violated the separation of powers. He felt the Governor should appoint members to the commission.

Most of the states who called conventions in the seventies established commissions in the way set forth in SB 723. There was usually a cooperative effort to insure a successful convention.

The legislature in Alaska feels they have the right to appoint members to any constitutional convention based on the premise that since the constitutional convention is a law-making function

and since the Legislature, by law, may provide for the calling of a constitutional convention, including procedures, it should have a say in the appointment of a preparatory commission.

Since there is disagreement regarding the commission and the appointment of its members between the two branches of government, perhaps, in order to successfully pass enabling legislation, this matter should be left out and addressed at a later date with a solution which will satisfy both parties.

Appropriation: There is no absolute formula for the funding of constitutional conventions. Conventions in the seventies ranged from $20,000 appropriated to the Rhode Island Convention to $3.8 million appropriated for the Texas Convention. The amount should be adaquate to finance all convention needs, including official pre and post-convention activities, including but not limited to staff and consultant salaries and benefits, delegate compensation, travel, material preparation, and expenses for the functioning of the convention itself. It has been recommended that delegates be compensated at the same rate as Legislators during the legislative session.

Convention Site: The Alaska Constitutional Convention of 1955-'56, following the example of the New Jersey Convention of 1947, which was convened on a college campus, held its convention on the campus of the University of Alaska at Fairbanks.

In 1971 the legislature assigned two research persons to conduct a constitutional convention site survey. After visiting the Fairbanks campus, Anchorage and Juneau, and evaluating the three sites as to location, facilities, timing and other criteria, it was recommended that the University of Alaska at Fairbanks again be the convention site.

A preparatory commission or the legislature itself, should look into all the pros and cons of each possible site including conducting a site survey similar to the one held in 1971 to determine which place would best function physically to carry out the objectives and ideals of the convention. The changing times, technological advances and public perception since the 1955-56 convention necessitates a very thorough study of the choice for a proper site.

RECEIVED

MAR 05 1981

M E M O R A N D U M

TO: REP. BRIAN ROGERS

FROM: SENATOR VIC FISCHER

DATE: MARCH 4, 1981

RE: Constitutional Convention bill

Sec. 44.90.020(d) specifies that the convention shall meet for not more than 90 days but may recess for 15 days. It is not clear in the section whether the 15 days would come out of the 90 or could be in addition. You might wish to clarify this while the bill is in Senate Judiciary or on the House side.

cc: Sen. Pat Rodey

SB

167

COMMITTEE REPORT

SENATE

2/25/82

FURTHER: None

Date: _____

Mr. President:

The Committee on JUDICIARY has had CSSB 167(Rules)
Alaska Public Offices Commission

under consideration and (a majority of the committee) (the committee) reports it back with the ~~following~~ recommendations:
INDIVIDUAL

[ ] do pass [ ] do not pass

[X] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

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_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

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_____

CHAIRMAN

S 60 (Rev. 12/78)

COMMITTEE REPORT

SENATE

5/13/81

FURTHER: None

Date: May 29, 1981

Mr. President:

The Committee on JUDICIARY has had SB 167

Alaska Public Offices Commission

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for SB167 (JUD) [X] same title [ ] new title

and recommends the individual recommendations

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING DO PASS

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

S 60 (Rev. 12/78)

Amdts. not acted on

SENATE AMENDMENT

BY HARR

To: Amend #7 and 8 SENATE BILL No. CSSB 167 (Cubs)

To: _____ HOUSE BILL No. _____

PAGE: LINE:

line 3 of amendment 7:
delete "for a state office or"

Adopted 12-7

CSSB167 (rules) Amendment #7 By Rodey & Ashworth

Page 12, line 10

AS 15.13 is amended by adding a new section to read: Sec. 15.13.121. EFFECT OF CERTAIN CONVICTIONS. (a) If a successful candidate for a state office or for a seat on a city council or borough assembly or for borough or city mayor is convicted of a misdemeanor described in AS 15.13.120(a)(1), (3), or (6), the election is void and the successful candidate may not hold the office to which the candidate was elected. A vacancy occuring under this section shall be filled as required by law.

(b) When a candidate or a nominee is charged with a misdemeanor described in (a) of this section, the case shall be promptly tried and the case shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

Renumber sections accordingly

Failed 2/24
A-1
O-

Line 14, Page 11:

Insert the word "knowingly" between the word "or" and the word "failing".

2/5 Rodey Move rescind action in Failing am #7

[redacted] w/o rescinded by un. consent

Rodey moved am #7.
2nd & am by Parr rejected
Rep move to Judiciary obj- 12-7

SENATE AMENDMENT #8

By Senator Fahrenkamp

To: _____ SENATE BILL No. CSSB 167 (Rls)(am)

To: _____ HOUSE BILL No. _____

PAGE: LINE:

Page 2, Line 16, delete "his" and insert"HH"

Page 2, Line 24, delete "his" and insert "the"

Page 3, Line 20, delete "himself"

Page 5, Line 7, delete "his" and insert "the"

Page 6, Line 14, delete "he" and insert "the candidate"

Page 7, Line 18, delete "his" and insert "that candidate's"

Page 9, Line 14, delete "he" and insert "Thepperson"

Page 12, Line 17, delete "he" and insert "the individual"

Page 12, Line 18, delete "himself"

Page 12, Line 20, delete "he" and insert "the individual"

Page 12, Line 22, delete "he" and insert "the individual"

Page 12, Line 22, delete "his"

Page 12, Line 24, delete "his" and insert "the individualss"

Page 12, Line 25, delete "he" and insert "the individual"

Page 12, Line 27, delete "he" and insert "the individual"

AMENDMENT # 1
CSSB 167 (Rules)

Page 12, line 1

Amended by inserting a new section on page 12: line 1

Section 27. AS 15.13.120(b)

(b) The nomination for, or election to, an office of a candidate who violates a provision of this chapter, or whose campaign treasurer or deputy campaign treasurer violates a provision of this chapter, is void, and, if he is elected, the successful candidate may not hold office and the office shall be filled as required by law in the case of vacancy. When a violation of this chapter is alleged, the candidate's right to the nomination or the office may be tested in an action brought in the superior [supreme] court as a matter of original jurisdiction. All cases of this nature shall be in a preferred position for purposes of argument and decision, so as to assure a speedy disposition of the matter.

Renumber remaining sections.

SENATE AMENDMENT #2

By Senator Robert H. Ziegler, Sr.

To: Amend SENATE BILL No. CSSB 167 (Rls.)

To: _____ HOUSE BILL No. _____

PAGE: 4 LINE: 28

After the word "made", change the period (.) to a comma (,) and insert the following:

"or the indebtedness is incurred, whichever first occurs."

2/27
Ziegler moved
adp. w. c.

SENATE AMENDMENT #3

By ~~Fischer~~ FISCHER

To: _____ SENATE BILL No. 167

To: _____ HOUSE BILL No. _____

PAGE: 5 LINE: 29
" 6 " 2

" 6 " 3

after " candidate" add "or ballot issue"

AMENDMENT

#5

Offered in the SENATE

By Dankworth

TO: CSSB 167 (Rules)

Page 14, line 4:

Delete "15.13.120(d)" and insert "15.13.120(b) and (d)"

10-7-1st-late.

SENATE AMENDMENT #6

By RAY

To: CS SENATE BILL No. 167 (Rules)

To: _____ HOUSE BILL No. _____

PAGE: 1 LINE: 20

Put period • after word "board" and delete rest of sentence.

adp.
w. C.

S 70

AMENDMENT TO CSSB 167 (RULES) By the Judiciary Committee

Page 11, line 14
Insert the word "knowingly" between the word "or" and the word "failing".

Page 12, line 10
AS 15.13 is amended by adding a new section to read:

Sec.15.13.121. EFFECT OF CERTAIN CONVICTIONS. (a) When a candidate or an elected official is charged with a misdemeanor described in (b) of this section, the case shall be promptly tried and shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

(b) If a successful candidate for a state or municipal elective office is convicted of a misdemeanor described in AS 15.13.-120(a) (1), (3), or (6), the election of that candidate shall be declared void by the director of the Division of Elections, and the candidate may not hold the office to which the candidate was elected. A vacancy occurring under this section shall be filled as required by law.

Page 13, line 25
15.13.130 is amended by adding the following paragraphs:

(8) "knowingly" means the same as that set out in AS 11.81.900(a)(2).

(9) "reasonably complete report" means a report which accurately reflects the campaign contributions and expenditures of the candidate and which is free from significant ommissions which are known to the candidate.

Renumber sections accordingly.

blyman holding office at the time the change takes effect is not affected by that change.

(b) The regular term of office begins on the first Monday following certification of the election, unless a different date is prescribed by borough charter or ordinance.

(c) This section applies to home rule and general law boroughs. (§ 2 ch 118 SLA 1972; am § 13 ch 118 SLA 1972; am § 4 ch 83 SLA 1979; am § 11 ch 128 SLA 1980)

Effect of amendments. — The 1979 amendment rewrote the second sentence of present subsection (a).

The 1980 amendment restructured the section into present subsections (a) — (c), added the present second sentence of subsection (a), and substituted "unless a different date is prescribed by borough charter or ordinance" for "the current term of incumbent assemblymen may not be altered under this section" at the end of subsection (b).

Editor's notes. — Section 26, ch. 83, SLA 1979, provides that the terms of borough assemblymen elected or appointed to dual borough assembly-city council seats are not effected by the amendment made to AS 29.23.040 by sec. 4, ch. 83, SLA 1979 until reapportionment of the assembly is required or proposed under AS 29.23.020 or under AS 29.23.021 — 29.23.025.

Sec. 29.23.060. Procedure. (a) The assembly shall meet at least once every month, unless otherwise provided by ordinance. All meetings shall be public meetings. Special meetings may be held on the call of the chairman, the presiding officer, or one-third of the members, upon not less than 24 hours written or oral notice communicated to each member. In an emergency a special meeting shall be a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The assembly shall elect from among its members a presiding officer and a deputy presiding officer to serve at its pleasure, except that in manager plan boroughs the borough mayor serves as presiding officer. If the presiding officer is not present or disqualifies himself, the deputy presiding officer shall preside.

(c) The assembly shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The assembly is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56.010 — 15.56.130 as a corrupt practice. The assembly shall consider a conviction of a member for a felony or misdemeanor described in AS 15.56.010 — 15.56.130 as a corrupt practice at its first meeting following the final determination of the conviction.

(d) A majority of the membership authorized by law constitutes a quorum. In the absence of a quorum, any number less than a quorum may recess or adjourn the meeting to a later date. Actions of the assem-

bly are adopted by a majo
All assemblymen present
reasons permits a member
on a question in which he
interest.

(e) The final vote on e
motion is a recorded "yes"
it is necessary only so to s

(f) Repealed by § 16 ch
(g) Repealed by § 16 ch
(h) Repealed by § 16 ch
(i) Repealed by § 16 ch
(j) Repealed by § 16 ch
§ 16 ch 118 SLA 1972; am

Cross references. — As to a
from official action when there is
of interests, see AS 29.23.555.

Article 2. Boroug

Section
130. Power generally

Sec. 29.23.130. Power
adopted a manager plan,
power is vested in an ele
adopted a manager plan,
appointed manager and th
mayor who has the same f
ager-plan city under AS 29

(b) A borough voter is el
may by ordinance establish
borough mayor not exceedi

(c) The borough mayor's
until a successor is elected
Monday following certificat
may provide by ordinance fo
except that the current term
be altered.

(d) A borough may adopt
provided in AS 29.23.410 —
veto an ordinance or resolut
The manager has all the po
chief administrative officer.
executive.

(e) A borough adopting a
city, enter into a contract pr

within the borough to serve also as borough manager. A city adopting a manager plan may, by agreement with a borough, enter into a contract providing for the manager of a borough within which the city is located to serve also as city manager. Appointment and service of the manager shall be as otherwise provided for managers in AS 29.23.130 — 29.23.150 and AS 29.23.450 — 29.23.470. Nothing in this subsection affects the authority of the assembly or council to provide for other dual officeholding if the dual offices held are compatible or otherwise to appoint officers and employees in accordance with law.

(f) The assembly, with the concurrence of two-thirds of its members, may remove the borough mayor from office for a conviction of a felony or misdemeanor described in AS 15.56.010 — 15-56.130 as a corrupt practice. The assembly shall consider a conviction of the borough mayor of a felony or misdemeanor described in AS 15.56.010 — 15.56.130 as a corrupt practice at its first meeting following the final determination of the conviction. (§ 2 ch 118 SLA 1972; am § 1 ch 6 SLA 1975; am § 1 ch 63 SLA 1976; am §§ 5, 6 ch 83 SLA 1979; am § 210 ch 100 SLA 1980)

Effect of amendments. — The 1975 amendment added subsection (e).

The 1976 amendment added the second sentence of subsection (b).

The 1979 amendment substituted "certification of the mayor's election" for "his election, which is held the first Tuesday of October, unless a different date of election is provided by ordinance" at the end of the first sentence of subsection (c) and deleted the former fourth sentence of subsection (d), which read: "If the manager plan is adopted, it becomes effective following certification of the results of the first regular election occurring at least six months after adoption of the plan."

The 1980 amendment added subsection (f).

Article 3. City Council.

Section

200. Composition, eligibility, election and term
210. Procedure

Sec. 29.23.200. Composition, eligibility, election and term. (a) Each first class city has a council of six members elected by the voters at large. Each second class city has a council of seven members elected by the voters at large. The council of a first or second class city may by ordinance provide for election of members other than on an at-large basis for all members.

(b) A city voter is eligible to hold office as a member of the council. The council may by ordinance establish residence requirements for council members not exceeding three years. A council member who ceases to be eligible to be a city voter immediately forfeits that office.

(c) Councilmen are selected for three-year terms and until their successors are elected and have qualified. The regular term of office begins on the first Monday following certification of the election. The

manager. A city adopting
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for a conviction of a felony
— 15-56.130 as a corrupt
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15.56.010 — 15.56.130 as a
the final determination of
ch 6 SLA 1975; am § 1 ch
n § 210 ch 100 SLA 1980)

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becomes effective following cer-
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regular term of office
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council may provide by ordinance for different terms not to exceed four years, except that the current term of incumbent councilmen may not be altered. (§ 2 ch 118 SLA 1972; am § 2 ch 63 SLA 1976; am § 7 ch 83 SLA 1979)

Effect of amendments. — The 1976 amendment, in subsection (b), substituted "office as a member of the council" for "the office of councilman" at the end of the first sentence, added the present second sentence, and substituted "that office" for "his office" at the end of the third sentence.

The 1979 amendment, in subsection (c), substituted "Councilmen are selected" for "An election is held annually on the first Tuesday of October, unless a different election date or interval of years is provided by ordinance, to choose councilmen" at the beginning of the first sentence and inserted "certification of" in the second sentence.

Sec. 29.23.210. Procedure. (a) The council shall meet at least once every month, unless otherwise provided by ordinance. Special meetings may be held on the call of the mayor or two councilmen upon not less than 24 hours written or oral notice communicated to each member. In an emergency, a special meeting called on less than 24 hours notice is a legal meeting if all members are present or there is a quorum and all absent members have waived in writing the required notice. A waiver may be made either before or after the time of the meeting. The waiver shall be attached to and made a part of the journal for that meeting.

(b) The council shall determine its own rules and order of business and provide for keeping a journal of its proceedings. The council is the judge of the election and qualification of its members and, with the concurrence of two-thirds of its members, may expel a member for a conviction of a felony or misdemeanor described in AS 15.56.010 — 15.56.130 as a corrupt practice. The council shall consider that conviction during its first meeting following final determination of the conviction.

(c) Four councilmen constitute a quorum. Four affirmative votes are required for the passage of an ordinance, resolution, or motion.

(d) The final vote on each ordinance, resolution, or substantive motion is a recorded roll call vote. All councilmen present shall vote unless the council, for special reasons, permits a member to abstain. (§ 2 ch 118 SLA 1972; am § 8 ch 83 SLA 1979; am § 211 ch 100 SLA 1980)

Cross references. — As to abstaining from official action when there is a conflict of interests, see AS 29.23.555.

Effect of amendments. — The 1979 amendment added the third, fourth and fifth sentences of subsection (a).

The 1980 amendment added the second and third sentences in subsection (b).

Article 4. City Executive and Administrator.

Section
250. Election and term of mayor
255. Removal from office

Sec. 29.23.250. Election and term of mayor. (a) A voter of a home rule or general law city is eligible to hold the office of mayor, except that a home rule city may prescribe additional residency requirements by charter. The council, for all other cities, may by ordinance establish residence requirements for candidates for mayor not exceeding three years.

(b) The mayor of a first class city is elected at large for a term of three years and until a successor is elected and has qualified. The council may provide by ordinance for a different term not to exceed four years, except that the current term of an incumbent mayor may not be altered.

(c) The mayor of a second class city is elected by and from the council for a term of one year and until a successor is elected and has qualified.

(d) The mayor's regular term begins on the first Monday following certification of the mayor's election. The council of a second class city shall meet on the first Monday after certification of the regular election and elect a mayor who takes office immediately. (§ 2 ch 118 SLA 1972; am § 3 ch 63 SLA 1976; am §§ 9, 10 ch 83 SLA 1979)

Effect of amendments. — The 1976 amendment added the second sentence of subsection (a).

The 1979 amendment substituted "of one year and until a successor is elected and has qualified" for "equal in length to a councilman's term" at the end of subsection (c), and in subsection (d), substituted "certification of the mayor's election" for "this election, which is held on the first Tuesday of October, unless a different date of election is provided by ordinance" in the first sentence and "certification of the regular election" for "the regular election date" in the second sentence.

Sec. 29.23.255. Removal from office. The council may, with concurrence of two-thirds of its members, remove the mayor from office for a conviction of a felony or misdemeanor described in AS 15.56.010 — 15.56.130 as a corrupt practice. The council shall consider the conviction during its first meeting following final determination of the conviction. (§ 212 ch 100 SLA 1980)

Article 5. School Boards.

Sec. 29.23.310. Election.

NOTES TO DECISIONS

Quoted in Tunley v. Municipality of Anchorage School Dist., Sup. Ct. Op. No. 2160 (File Nos. 4796, 4797, 4826), 617 P.2d 490 (1980).

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

June 8, 1981

Ms. Theda Pittman, Director
Alaska Public Offices Commission
610 C Street, Suite 207
Anchorage, Alaska 99501

Dear Theda:

Enclosed please find the latest version of SB 167, as passed from the Judiciary Committee. As you know, the bill is now in the Rules Committee, and I couldn't hazard a guess as to whether or not it will be moved from that committee this session. However, due to the late hour of this session, it is my feeling it may well be held until next session.

We enjoyed working with you on this legislation, and found you and your offices to be extremely helpful.

Best wishes.

Sincerely,

Oleta D. Simmons
Researcher

/ods
Enclosure

* Sec. 16. Page 7, lines 19-20, substitute: The Commission may by regulation allow candidates and groups to accept contributions of $50 or less without recording the name of the contributor.

Note: Legis. intent to provide authority consistent with regulations on recordkeeping requirements.

SECTIONAL COMPARISON OF SB 167 WITH CSSB 167(SA) -- MAY 24, 1981
PREPARED BY ALASKA PUBLIC OFFICES COMMISSION

(Note: SB 167 amendments to AS 15.13 are identifical to FCCS HB 230, vetoed by Governor Hammond in 1980.)

SECTION # - SB 167	SECTION # - CSSB 167(SA)
1 - Clarifies .010(a) that muni exemption is for candidates.	1 - Same plus exempts candidates for service area & elected advisory boards.
2 - .020(b), Gov. appoints 5; does not include party lists.	2 - Governor appoints 5; does not include party lists or Legislative confirmation.
3 - .020(d), Shortens terms to 3 years; no longer prohibits reappointment.	3 - Same except continues 5-year terms.
4 - .020(h), to make replacement of vacancies consistent with appointment.	4 - Same.
	5 - .030(10) clarification making power to issue orders explicit.
5 - .030, new lang to limit amendments to regulations before election.	6 - Same.
	7 - .040(a) to allow lump sum of small expenditures and certification by dep. tr.
	8 - .040(b)(3) to allow lump sum of small expenditures by groups.
6 - .040(d), deletion to eliminate inconsistency with .080 re: Statement of Contributions; clarifies that Statement of Expenditures required "against" candidates.	9 - Same.
7 - .040(e) consistent with Sec. 6. Eliminates copy to campaign.	10 - Same.

SB 167	CSSB 167(SA)
8 - New .042 "zero" exemption.	11 - More liberal than SB 167; allows "zero" campaign plus those where expenditures do not exceed $250; needs amendment to also allow contributions totaling no more than $250.
9 - New .045 requiring regulations to provide for hearings in accordance with Admin. Procedures Act.	12 - Same. Not necessary since APOC is not adjudicatory with regard to criminal violations.
10 - Moves .130(3) information on groups to .050.	13 - Same.
11 - Clarifies .070(a) on $1,000 limitation to "competing candidates."	14 - Same.
	15 - Amends .070(b) to allow cash contribution exceeding $100 if receipted.
12 - Clarifies .070(d) regarding anonymous contributions. Allows $5 contribution without record.	16 - Same. Drafting error; Commission recommended deletion re: $5 and State Affairs concurred.
	17 - .090 to allow candidates a "short form" of identification.
13 - .090 addition to exempt small items from identification.	18 - New subsections; requires persons & groups other than candidate to provide name, and address or phone in identification. Allows APOC to exempt small items.
14 - Reverses .100 to allow expenditures before filing.	19 - Same.
15 - Changes .110(a)(2) to 10 Day pre-election, rather than 7 Day report. In conjunction with repeal of 110(a)(1), would hamper access of public to information prior to election.	

SB 167	CSSB 167(SA)
16 - Amends .110(b); changes 24 hour report to 48 hour; deletes 3 day gap after pre-election report; eliminates requirement to report expenditures.	20 - Same.
17 - .110 addition to define "final" report and require continued reporting on outstanding obligations.	21 - Same.
18 - New .115; moves complaint procedures from .120(d).	22 - Same.
19 - Amends .120(a) to delineate specific criminal violations; eliminates any failure to ID.	23 - Same except that failure of person or group (but not candidate) to ID would still be criminal violation.
20 - Clarifies .120(c) that groups in violation should be referred to AG (as well as candidates), but not contributors for failing to file Statement of Contrib.	24 - Same.
21 - Amends .120(e) to provide 1 year statute of limitations. 1980 amendment to Election Code has already done this.	See Section 28, CSSB 167(SA).
22 - New .121 re: eligibility determination procedures for convicted cand.	25 - Same. Not as comprehensive as HB 89 am.
23 - .125 deletion of civil penalty for 10-day post-election report; typo, should be deleted.	
24 - .130(1) expansion of definition of candidate.	26 - Same.
25 - .130(2) deletion of "services" as form of contribution. Allows contribution to be returned within 72 hours.	27 - Does not delete "services;" allows contribution to be returned with 72 hr.

SB 167	CSSB 167(SA)
	28 - Amends AS 15.56.130 to restore 4 year statute of limitations for AS 15.13.
Sections 26 - 37 proposed amendments to Regulation of Lobbying (AS 24.45) and Conflict of Interest (AS 39.50).	
38 - Repealers: .020(c) - 5th member; .040(f) - supplier of services; .070(f) & (g) - spending limits; .110(a)(1) - 30 day reports; .110(d) - supplier of services; & .120(b) - eligibility.	29 - Repealers: .020(c) - 5th member; .040(f) - supplier of services; .070(f) & (g) - spending limits; .110(d) - supplier of services; & .120(b) - eligibility.
39 - Directions for Commission terms consistent with 3-year terms in section 3; present appointments to expire on effective date of act.	
40 - Effective date of July 1, 1981.	30 - Sections 2-10 & 12-29 effective January 1, 1982.
	31 - Sections 1 and 11 effective July 1, 1981.

Alaska State Legislature

Senate Committee on State Affairs

Vic Fischer, Chairman • Pouch V • Juneau, Alaska 99811 • (907) 465-4954

Official Business

M E M O R A N D U M

TO: Senator Pat Rodey
Chair, Senate Judiciary Committee

FROM: N. Groszek
Administrative Aide, Senate State Affairs

DATE: May 26, 1981

RE: CSSB 167(SA) entitled, "An Act relating to election campaigns and to the composition and responsibilities of the Alaska Public Offices Commission; and providing for an effective date."

Due to an oversight on my part, CSSB 167(SA) was reported out of the Senate State Affairs Committee with two errors. The errors are as follows:

1) On page 7, lines 19 & 20, the sentence reading "A candidate may accept contributions of $5 or less without recording the name of the contributor,' should have been deleted; and

2) On page 11, lines 1 & 2, the language should read "without identification of sponsorship in violation of AS 15.13.090."

I apologize for any inconvenience this may have caused your committee.

SECTIONAL ANALYSIS OF CSSB 167(SA)

"An Act relating to election campaigns..."

Prepared by the Alaska Public Offices Commission -- May 24, 1981

Section 1: Amends AS 15.13.010(a) to clarify that a municipality voting on exemption from AS 15.13 is voting to exempt candidates (rather than "elected municipal officers"), persons, and groups active in municipal election campaigns. Also eliminates the present applicability of AS 15.13 to municipal candidates for service area boards or any local board or local commission which is advisory only.

Section 2: Amends AS 15.13.020(b) so that the fifth member of the Commission is appointed by the Governor (not by the other four members) without regard to party affiliation. Eliminates present requirement that the Governor choose from lists submitted by central committee of each party when appointing four members. Does not specify that the members are subject to Legislative confirmation.

Section 3: Amends AS 15.13.020(d) to delete references to the fifth member of the Commission for consistency with new method of appointment in Section 2; retains present 5-year term of commission members. No longer limits members to one term. (SB 167 proposed three-year terms which would have made it impossible to prevent the terms of 2 members of the same party from expiring in consecutive years. Three-year terms would also diminish the Commission's collective knowledge in gubernatorial election years unless members succeed themselves.)

Section 4: Amends AS 15.13.020(h) to make the selection of Commission vacancies consistent with the new method of original appointment established in Section 2.

Section 5: Amends AS 15.13.030(10) to make explicit the Commission's authority to issue orders. The existing language of 15.13.120(d) shows that the authority to issue orders was intended when it refers to "violation of a provision of this chapter, or a regulation or order issued under it....."

Section 6: Amends AS 15.13.030 by adding new subsections which prohibit the application of new or amended regulations to candidates or groups in a particular election, if the effective date of the regulations is later than 30 days before the final date for filing a declaration of candidacy or nominating petition. Presumably deprives the Commission of the power to promulgate emergency regulations and adds additional constraints to the already lengthy adoption process.

Section 7: Amends AS 15.13.040(a), replacing the present requirement to itemize all expenditures with a provision that only expenditures exceeding $100 need to be reported by date, amount, and check number -- this provision would parallel the existing provisions for reporting small contributions in lump sums and eliminate the need to itemize every single expenditure. Allows deputy

treasurers to certify reports if the Commission has received notice of their appointment; presently the ability to certify is limited to the candidate and treasurer. Makes explicit the requirement to report unpaid obligations as expenditures in keeping with the definition of expenditure in .130(3).

Section 8: Amends .040(b)(3) to clarify that "contributions" on a group report are received by the group - the present language refers to both contributions and expenditures as being "made" by the group. Provides language consistent with Section 7 alleviating the detailed listing of expenditures of $100 or less.

Section 9: Amends .040(d) to clarify that the requirements of this subsection do not apply to groups reporting under 040(b) e.g., PAC's. Eliminates language requiring that individuals submit a statement of contributions once they contribute in excess of $100. (The Commission presently ignores this inconsistency with .080 and enforces the requirement to report once a contribution exceeds $250). Clarifies that an independent expenditure <u>against</u> a candidate is required to be reported.

Section 10: Amends .040(e) for consistency with Section 9 and eliminates a requirement to furnish the campaign with a copy of the independent expenditure report required by .040(d).

Section 11: Adds a new section to AS 15.13 allowing candidates who do not intend to accept contributions or to expend more than $250 to file one certified exemption report. The Commission's intent in making the suggestion was to allow a candidate who accepted no more than $250 and expended no more than $250 to be eligible for exemption. Page four, starting with line 23 should read, "a candidate who intends to accept contributions totaling no more than $250 and to make expenditures totaling no more than $250 may file a report..."

-or-

"a candidate who does not intend to accept contributions which exceed $250 in total value and to make expenditures which exceed $250 in total value may file a report..." (Page 5, line 1, also needs clarification.) The new section also specifies that the candidate who so files and later exceeds the limitations must report within three days but that returning an unsolicited contribution within 72 hours of its receipt will prevent loss of the exemption. For two years the Commission has, by regulation, allowed those who planned zero campaign activity to file a "Campaign Exemption Reporting Form." The process has been of benefit to both the Commission and many municipal candidates; the Commission asks that it be part of the Statute and that it include those whose plans call for limited financial activity.

Section 12: Amends AS 15.13.045 to add a new subsection requiring the promulgation of regulations, consistent with the Administrative Procedures Act, concerning the Commission's hearing process. Like Section 6, this new requirement would add length to an already lengthy process. The Commission has no adjudicatory powers in criminal matters, all of which must be referred to the Attorney General who then decides whether to prosecute. AS 15.13.120(d) requires the Commission to give "due notice and an opportunity for a hearing." The only actions the Commission can take as the result of such hearings are: 1) dismissal,

2) continued investigation, 3) referral to the AG, or 4) the application of civil penalties. None of these courses of action are such as would warrant the type of hearing dictated by Section 12.

Section 13: Housekeeping which amends AS 15.13.050 by transferring language from .130(3) (defining a political group) into the section which presently provides information about group requirements.

Section 14: Amends 15.13.070(a) by removing reference to expenditure limitations which no longer exist and removes confusion over the intent of the phrase "competing candidates." Does not address two things which may deserve further attention: 1) specifying that political party subdivisions are exempt from the $1,000 limitation only so long as they are not, in actuality, acting as a candidate's campaign committee; and 2) clarifying in (a)(2) that initiative, referendum or recall petition efforts are not subject to the $1,000 limitation.

Section 15: Amends 070(b) so that the recipient of a cash contribution in excess of $100 must issue a receipt rather than -- as is presently the case -- refuse it or be in violation. The Commission feels that cash contributions exceeding $100 should be allowable as long as a receipt is issued because there are areas of the state where facilities for purchasing money orders, cashier's checks or bank drafts are limited. Deletes the phrase "or by cash payment" which presently forbids purchasing with cash an item intended as a non-monetary contribution if the cost exceeds $100.

Section 16: Amends AS 15.13.070(d) to clarify a candidate's requirement to dispose of an anonymous contribution. Includes new language (Page 7, line 19) which State Affairs agreed to delete. Although the Commission understands the intent of the new language, it would have allowed those looking for legal loopholes to exceed the $1,000 maximum contribution through sheer persistence.

Section 17: Amends 15.13.090 concerning identification of communications so that a candidate need include only his or her name or that of the candidate's campaign committee in the identification. Candidates spend much time and money publicizing who they are and how they may be reached. The Commission feels that as long as the communication clearly identifies the candidate who has paid for it, the public will seldom have trouble finding the responsible party.

Section 18: Amends AS 15.13.090 by adding a new subsection requiring that individuals, persons, or groups (other than a candidate) include name and mailing address or telephone number in their identification of communications. Such a requirement gives the public needed information about those attempting to influence the outcome of an election. Also allows the Commission to exempt small items from the identification requirements, a step which the Commission has already taken by regulation, 6 AAC 29.370.

Section 19: Amends AS 15.13.100 so that candidates are allowed to expend money before filing formally for office. The present language prohibits such expenditures except for personal travel and surveys or polls and has often caused candidates to violate the law inadvertently. The new language also clarifies that contributions may be accepted before filing and mentions the need to report such contributions and any expenditures on the first report required under 15.13.110.

Section 20: Amends AS 15.13.110(b) to eliminate the requirement to file reports of major expenditures (in excess of $250) during the week prior to the election. Extends the time period during which major contributions must be reported from 7 to 10 days, thereby eliminating the 3-day gap between the present 7-Day reporting period and the 24-Hour reporting period. Increases the amount of time, from 24 to 48 hours, within which the reports of major contributions must be filed. Allows deputy treasurers to file 48-Hour reports consistent with changes in Section 7.

Section 21: Amends AS 15.13.110 by adding a new subsection which names the 10-Day post-election report as the final campaign disclosure report if the campaign has ceased and all debts are paid. Clarifies that year-end reports must be filed until any oustanding debt or obligation is satisifed.

Section 22: Adds a new section to AS 15.13 which is substantially the same as the present language in AS 15.13.120(d) concerning the right of a person to file a complaint and specifying the Commission's responsibility to investigate such complaints.

Section 23: Amends AS 15.13.120(a), the criminal penalty section of the statute, in a effort to clarify specific violations which should be viewed as Class A misdemeanors. The current language makes any violation of AS 15.13 a criminal offense. Page 11, line 1 appears to be a drafting error; as it appears in CSSB 167(SA) a candidate's failure to properly identify a communication for himself or against his opposition would not be subject to criminal sanctions. The new subsection .090(b) refers to individuals, persons or groups other than the candidate.

Section 24: Amends AS 15.13.120(c) to clarify that the Commission should report to the Attorney General the names of both candidates and groups when they have failed to file a report. Deletes language requiring referral of contributors in keeping with changes in Section 9.

Section 25: Adds a new section to AS 15.13 which specifies the procedures for determining the eligibility of a successful candidate to hold office, if convicted of a misdemeanor. (Page 11, line 18 -- should be .120(a)(1), etc.) In conjunction with the repeal of .120(b), would eliminate the existing provision which says that the election of a successful candidate who violates the law is null and void but fails to suggest what procedures are to be undertaken by whom in enforcement. Similar to HB 89 am which also repeals AS 15.13.120(b) but is more thorough.

Section 26: Repeals and reenacts AS 15.13.130(1), expanding the definition of candidate to include not only those who file or campaign as write-ins, but also those who receive contributions or make expenditures, or who consent to such activities on their behalf.

Section 27: Amends AS 15.13.120(2) to exclude from the definition of "contribution" a contribution that is returned to the contributor within 72 hours of its receipt by a candidate or group.

Section 28. Amends AS 15.56.130 to eliminate the current conflict over the statute of limitations for a violation of the Campaign Disclosure Law; AS 15.13.120(e) specifies four years, rather than the one year allowed by AS 15.56.130. In a campaign with large accrued expenditures, contributions exceeding $1,000 could be received during the following year, and accepting such contributions would not be required to be reported until a year-end report which is due more than one year after the election.

Section 26: Repealers include:

- AS 15.13.020(c), the selection of the 5th Commission member by the other four;

- 15.13.040(f), the Supplier of Services report;

- 15.13.070(f) and (g), language on spending limits, found to be unconstitutional;

- 15.13.110(d), the Supplier of Services report; and

- 15.13.120(b), concerning eligibility of violators to hold office.

Section 30: Effective date of January 1, 1982 for most provisions.

Section 31: Effective date of July 1, 1981 on Sections I and II would allow relief for this year's municipal candidates who: 1) are running for service area boards; and 2) plan to run only limited campaigns.

SECTIONAL ANALYSIS OF CSSB 167(SA) work draft
"An Act relating to the Alaska Public Offices Commission..."
Prepared by the Alaska Public Offices Commission -- May 5, 1981

Section 1: Amends AS 15.13.010(a) to clarify that a municipality voting on exemption from AS 15.13 is voting to exempt candidates (rather than "elected municipal oficers"), persons, and groups active in municipal election campaigns. Also eliminates the present applicability of AS 15.13 to municipal candidates for service area boards or any local board or local commission which is advisory only.

Section 2: Amends AS 15.13.020(b) so that the fifth member of the Commmission is appointed by the Governor (not by the other four members) without regard to party affiliation; does not specify that the members are subject to Legislative confirmation.

Section 3: Amends AS 15.13.020(d) to delete references to the fifth member of the Commission for consistency with new method of appointment in Section 2; retains present 5 - year term of commission members. (SB 167 proposed three year terms which would have made it impossible to prevent the terms of 2 members of the same party from expiring in consecutive years. Three - year terms would also diminish the commission's collective knowledge in gubenatorial election years unless members succeed themselves.)

Section 4: Amends AS 15.13.020(h) to make the selection of Commission vacancies consistent with the new method of original appointment established in Section 2.

Section 5: Amends AS 15.13.030(10) to make explicit the Commission's authority to issue orders. The existing language of 15.13.120(d) shows that the authority to issue orders was intended when it refers to "violation of a provision of this chapter, or a regulation or order issued under it....."

Section 6: Amends AS 15.13.040(a), replacing the present requirement to itemize all expenditures with a provision that only expenditures exceeding $100 need to be reported by date, amount, and check number -- this provision would parallel the previously-authorized deputy treasurers to certify reports; presently the ability to certify is limited to the candidate and treasurer. Makes explicit the requirement to report unpaid obligations as expenditures in keeping with the definition of expenditure in .130(3).

Section 7: Amends .040(b)(3) to clarify that "contributions" on a group report are received by the group - the present language refers to both contributions and expenditures as being "made" by the group. Provides language consistent with Section 6 alleviating the detailed listing of expenditures of $100 or less.

Section 8: Amends .040(d) to clarify that the requirements of this subsection do not apply to groups reporting under 040(b) e.g., PAC's. Eliminates language requiring that individuals submit a statement of contributions once they contribute in excess of $100. (The Commission presently ignores this inconsistency with .080 and enforces the requirement to report once a contribution exceeds $250.) Clarifies that an independent expenditure <u>against</u> a candidate is required to be reported.

Section 9: Amends .040(e) for consistency with Section 8 and eliminates a requirement to furnish the campaign with a copy of the independent expenditure report required by .040(d).

Section 10: Adds a new section to AS 15.13 allowing candidates who do not intend to accept more than $250 in contributions <u>and</u> who do not intend to expend more than $250 to file one certified exemption report. Specifies that the candidate who so files and later exceeds the limitations must report within three days but that returning an unsolicited contribution within 72 hours of its receipt will prevent loss of the exemption. For two years the Commission has, by regulation, allowed those who planned zero campaign activity to file a "Campaign Exemption Reporting Form." The process has been of benefit to both the Commission and many municipal candidates; the Commission asks that it be part of the Statute and that it include those whose plans call for limited financial activity.

Section 11: Housekeeping which amends AS 15.13.050 by transferring language from .130(3) (defining a political group) into the section which presently provides information about group requirements.

Section 12: Amends 15.13.070(a) by removing reference to expenditure limitations which no longer exist and removes confusion over the intent of the phrase "competing candidates." Does not address two things which may deserve further attention: 1) specifying that political party subdivisions are exempt from the $1,000 limitation only so long as they are not, in actuality, acting as a candidate's campaign committee; and 2) clarifying in (a)(2) that initiative, referendum or recall petition efforts are not subject to the $1,000 limitation.

Section 13: Amends 070(b) so that the recipient of a cash contribution in excess of $100 must issue a receipt rather than -- as is presently the case -- refuse it or be in violation. The Commission feels that cash contributions exceeding $100 should be allowable as long as a receipt is issued because there are areas of the state where facilities for purchasing money orders, cashier's checks or bank drafts are limited. Deletes the phrase "or by cash payment" which presently forbids purchasing with cash an item intended as a non-monetary contribution if the cost exceeds $100.

Section 14: Amends .070(d) to allow a candidate to accept contributions of $5 or less without recording the name of the contributor. The amendment appears harmless, but it creates a large "loophole" should an individual choose to circumvent the law. If this language were enacted, there would be nothing illegal about making a contribution of $5 daily in addition to donating the $1,000 maximum allowed by law. If the intent is to relieve the burden of bookkeeping at fund-raisers, the Commission's administrative regulation, 6 AAC 29.326, exempts the recording by name of those at fund-raisers so long as there are 25 or more paying participants and no one pays more than $50.

Section 15: Amends 15.13.090 concerning identification of communications so that a candidate need include only his or her name or that of the candidate's campaign committee in the identification but an individual, person, or group would be required to provide a name as well as an address or phone number. The Commission feels that the intent of .090 would be well served by alleviating some of the detail presently required of candidates on the items they pay for themselves but continuing to require that those not known to the public need to provide fuller identification.

Section 16: Amends 15.13.090 by adding a new subsection which says the Commission can exempt small items from the identification requirements. The Commission has already promulgated such a regulation, 6 AAC 29.370.

Section 17: Amends 15.13.100 so that candidates are allowed to expend money before filing formally for office. The present language prohibits such expenditures except for personal travel and surveys or polls and has often caused candidates to violate the law inadvertantly. The new language also clarifies that contributions may be accepted before filing and mentions the need to report such contributions and any expenditures on the first report required under 15.13.110.

Section 18: Amends AS 15.13.110(b) to eliminate the requirement to file reports of major expenditures (in excess of $250) during the week prior to the election. Extends the time period during which major contributions must be reported from 7 to 10 days, thereby eliminating the 3 day gap between the present 7 Day reporting period and the 24 Hour reporting period. Increases the amount of time from 24 to 48 hours within which the reports of major contributions must be filed. Allows deputy treasurers to file 48 Hour reports consistent with changes in section 6.

Section 19: Amends AS 15.13.110 by adding a new subsection which names the 10 Day post-election report as the final campaign disclosure report if the campaign has closed and all debts are paid. Clarifies that year-end reports must be filed until any outstanding debt or obligation is satisfied.

Section 20: Adds a new section to AS 15.13 which is substantially the same as the present language in AS 15.13.120(d) concerning the the right of a person to file a complaint and specifying the Commission's responsibility to investigate such complaints.

Section 21: Amends AS 15.13.120(a), the criminal penalty section of the statute, in an effort to clarify specific violations which should be viewed as class A misdemeanors. The current language makes any violation of AS 15.13 a criminal offense.

Section 22: Amends AS 15.13.120(c) to clarify that the Commission should report to the Attorney General the names of both candidates and groups when they have failed to file a report. Deletes language requiring referral of contributors in keeping with changes in Section 9.

Section 23: Adds a new section to AS 15.13 which specifies the procedures for determining the eligibility of a successful candidate to hold office, if convicted of a misdemeanor. In conjunction with the repeal of .120(b), would eliminate the existing provision which says that the election of a successful candidate who violates the law is null and void but fails to suggest what procedures are to be undertaken by whom in enforcement.

Section 24: Repeals and reenacts AS 15.13.130(1), expanding the definition of candidate to include not only those who file or campaign as write-ins, but also those who receive contributions or make expenditures, or who consent to such activities on their behalf.

Section 25: Amends AS 15.13.120(2) to exclude from the definition of "contribution" a contribution that is returned to the contributor within 72 hours of its receipt by a candidate or group.

Section 26: Repealers include:

- AS 15.13.020(c), the selection of the 5th Commission member by the other four;

- 15.13.040(f), the Statement of contributions by contributors giving over $100;

- 15.13.070(f) and (g), language on spending limits, found to be unconstitutional;

-15.13.110(d), the Supplier of Services report; and

-15.13.120(b), concerning eligibility of convicted candidates to hold office.

Finally, SB 167 would have repealed the 30 Day Pre-election report also. One of the major objectives of disclosure is to give the public access to information in a timely fashion, and requiring only one large report just before the election would mean that the information would not, in fact, be available before the election. Cutting down the number of reports would not eliminate their complexity; approval of sections 6 and 7 would be of more aid to those reporting, without diminishing the value of the information to the public.

CSSB 167(SA) makes no provision to rectify the current inconsistency between AS 15.13.120(e) which provides a four year statute of limitations for Campaign Disclosure violations and AS 15.56.131 which allows only one year for initiating prosecution of any violation in the Election Code. From Senate floor discussion in 1980 when the Election Code revisions were passed, it is clear that 15.56.131 was not intended to affect 15.13.120(e).

Perhaps something like the following would accomplish the task:

* Section . AS 15.56.131 is amended to read:

Sec. 15.56.131. TIME LIMITATION. A prosecution for an offense described in the Alaska Election Code (AS 15.05 - 15.10 and 15.15 - 15.60) may not be maintained unless it is begun within one year after the date of the election in connection with which the offense is alleged to have been committed.

15.13

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

May 11, 1981

SUBJECT: Section 26 board status for APOC (CSSB 167 (State Affairs))

TO: Senator Vic Fischer, Chairman
Senate State Affairs Committee

FROM: Richard A. Bradley
Legislative Counsel

Nancy Groszek has asked that I make the members of the Public Offices Commission be confirmed by the legislature. This result may only occur if the APOC is established as a "section 26 board or commission". Bradner v. Hammond, 553 P.2d 1 (1976).

Sec. 26 [of Article III, Constitution of Alaska] provides that:

> SECTION 26. When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature . . .

Either the Public Offices Commission is already a "commission" "at the head of a . . . regulatory or quasi-judicial agency" -- in which case it already is a section 26 commission and the members as a matter of constitutional law are subject to confirmation -- or there is no power in the legislature to make it into a section 26 commission unless it recasts the powers of the commission such that it becomes a "regulatory or quasi-judicial agency" -- or unless the legislature establishes the commission as a department headed by a commission.

In a memorandum to the Speaker last year, I concluded that the commission did not qualify as a section 26 commission

for purposes of the confirmation of its members. Memorandum of June 1, 1980, copy enclosed.

Since the conclusions of that memorandum resulted from a conclusion that the functions of the commission were not properly describable as those of a "regulatory or quasi-judicial agency" and since the addition of the ethics responsibility does not change the nature of those functions, in my opinion there is no basis for conferring section 26 status on the commission.

And since the Bradner case holds that the legislature may not require the confirmation of public officials not required to be confirmed under the constitution, the introduction of the language requiring confirmation is, in my view, unconstitutional.

If the committee wishes the language requiring confirmation, please return the bill and it will be added.

RAB:ljb

Enclosures

80-071

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM June 1, 1980

SUBJECT: Article III, sec. 26 and the APOC

TO: Representative Terry Gardiner
Speaker of the House of Representatives

FROM: Richard A. Bradley
Legislative Counsel

You have requested a memorandum on the applicability of Article III, sec. 26 of the Alaska Constitution to the appointment of the members of the Alaska Public Offices Commission established in AS 15.13.

Sec. 26 requires the governor to appoint members of boards or commissions which are at the head of a "regulatory or quasi-judicial agency" subject to legislative confirmation.

No provision of AS 15.13, AS 24.45, or AS 39.50 requires the legislative confirmation of the members of the commission.

The question, then, is whether the Alaska Public Offices Commission is a "regulatory or quasi-judicial agency."

The activities of the commission fall under three chapters of the Alaska Statutes.

Under AS 15.13, the commission receives the reports of candidates for political office. If reports are not filed timely or if there are defects in the reports, the commission may impose sanctions for the lateness or the other defects.

Under AS 24.45, the commission receives reports of lobbying activity and imposes sanctions for late or inadequate filings.

Under AS 39.50, the commission again receives reports of public officials concerned with the disclosure of conflicts of interest and establishes appropriate sanctions.

Under none of these laws does the activity of the commission truly partake of the concept of regulation. Rather the regulation in question has been accomplished by the legislature in its enactment of the three chapters. The role of the commission is to monitor compliance with the regulations established by the legislature and to set sanctions to the extent that it has the power and to forward cases to the Department of Law where its power is lacking or the sanctions are inadequate.

It seems clear that the aspect of regulation undertaken by the commission is of a lower level than that undertaken by the Public Utilities Commission, for example. And the difference between the regulation undertaken by APOC and APUC is so different that the distinction more closely approximates a distinction in kind rather than a distinction in degree.

Having said this, the question whether this limited aspect of "regulation" qualifies to establish the commission as a section 26 commission is close.

In my view, the legislature may determine this question itself. It may characterize the responsibilities of the commission as regulatory and require compliance with sec. 26 requirements; alternatively, it may determine that the responsibilities do not rise to the level of regulation for the purposes of sec. 26 and avoid the requirements of sec. 26.

It does this in close cases not by any affirmative statement in the law itself but rather by its determination to require confirmation of the members of the commission or not.

The Bradner v. Hammond case, 553 P.2d 1 (Alaska 1976) stands for the proposition that the legislature may not undertake to require legislative confirmation of public officers of the executive branch who are not within the sweep of the confirmation power [Article III, secs. 25 and 26] under the constitution. But the case does not limit the authority of the legislature to determine for itself close questions of whether a board or commission excercises "regulatory or quasi-judicial" powers where the legislature has the power to establish the commission and grant it "regulatory or quasi-judicial" power.

The implicit legislative determination that the members of the commission do not require legislative confirmation constitutes, in the premises, an affirmative legislative determination that the commission does not exercise "regulatory or quasi-judicial" powers.

As I have suggested above, that conclusion is supportable by an analysis of the responsibilities of the commission.

And there is no legal significance to the submission by the governor of the names of appointees to the commission for legislative confirmation, if that has occurred. See, Bradner v. Hammond, supra, at 4, n.5.

RAB:ljb

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

JUNEAU BRANCH OFFICE:
TOUCH CO
JUNEAU, ALASKA 99811

LOCATION:
ROOM 302 GOLDSTEIN BUILDING
139 SEWARD STREET
PHONE: (907) 465-4864 OR 465-3471

February 5, 1981

The Honorable Senator Tim Kelly
Pouch V
Junaau, Alaska 99811

Dear Senator Kelly:

The Alaska Public Offices Commission would like to express its appreciation for the opportunity to present its views regarding revisions to Alaska's Disclosure Laws. As you are aware, each year since its creation in 1974, the Commission has offered suggestions to eliminate many of the burdensome requirements while also safeguarding the public mandate for disclosure.

During the 1980 session the Legislature passed FCCS HB 230 which was eventually vetoed by the Governor. The Commission felt that a major portion of this Bill contained amendments which would solve many of the present criticisms; however, it also contained several sections which would have severely hampered the Commission's ability to monitor the 1980 elections, as well as, damaged the public perception of the stature of the Commission in years to come. Therefore, the Commission supported Governor Hammond's veto of FCCS HB 230.

It is the understanding of the Commission, however, that FCCS HB 230 will be used as the basic guideline for legislative changes to be made this session. Therefore, the following discussion includes the Commission's views on those sections of FCCS HB 230 which were found to be objectionable, areas the Commission supports and has expanded upon, and several further suggestions that were not addressed in the original Bill.

This discussion paper, in most instances, does not include specific language for the suggested revisions, but rather explains the problem and offers recommendations.

Should you wish further discussion of the comments offered herein, our staff will be happy to accommodate you.

On Behalf of

ALASKA PUBLIC OFFICES COMMISSION

RICHARD F. LISTOWSKI
Chairman

RFL:NAC/jk

cc: Senator Vic Fischer
Senator Bett[illegible]nkamp
Senator T[illegible]oay

AMENDMENTS TO AS 15.13
CAMPAIGN DISCLOSURE LAW

Sec. 15.13.010 (Re: Applicability)

Presently all candidates who run in a municipal race, in a city with a population of more than 1,000, must register and file with the APOC. On several occasions the Commission has received requests from various clerks regarding the applicability of AS 15.13 to candidates for Service Area Boards or members of an elective board who serve in an advisory capacity. According to the clerks it is often difficult to get people to run for these positions, the candidates spend no money, and the positions are strictly of an advisory nature. A review of the reports on file with the APOC shows that ninety-nine percent of the time there are no expenditures and that when expenditures are made, they average approximately $10.

Having such candidates file the periodic reports or the statement that will be discussed under Sec. 042 later in this paper, appears to be meaningless. Therefore, the Commission recommends that language which eliminates filing by candidates for Service Area Boards and advisory boards be included.

Sec. 15.13.020 (Re: Selection of Commission Members)

FCCS HB 230 proposed that the current five-year terms of Commission members be reduced to three years. And, that the present process of selection -- recommendation by the two major political parties -- be eliminated.

The Commission opposes elimination of party recommendation. The current process gives credence to the ideology of a bi-partisan commission and guarantees the public appropriate input into the selection of individuals who will monitor the campaign process.

The Commission agrees that the Governor should confirm the remaining fifth Commission member. However, it suggests that the Governor appoint such a member from a list of two names submitted by the four members selected under .020(b). This mechanism would protect the independent and neutral status of this fifth position as well as respect the executive and legislative roles in the appointment process.

Reduction of the term length creates major problems. First, the initial selection process becomes somewhat confusing. In order to avoid the term of two members of the same political party from expiring in consecutive years, initial appointment would be as follows: One Democrat and one Republican serve an initial one-year term; one Democrat and one Republican serve an initial three-year term; the fifth position serves an initial two-year term. This system avoids the problem of consecutive expiration; however, it also means that two new members are appointed each year. Since the major elections are held every other year, the Commission could often find itself with two members who have relatively little knowledge regarding the complex issues of the campaign process and resulting disclosure.

Therefore, the Commission suggests amending this section by 1)

retaining the current process of political party input; 2) appointment of all members by the governor -- rather than only four; 3) confirmation of all members by the legislature; and, 4) retaining five-year terms with the provision of serving no more than one full term.

Sec. 15.13.030 (Re: Limitation on Regulations)

The new subsections contained in FCCS HB 230 to .030, do not prohibit the Commission from promulgating regulations, but these sections do limit the effectiveness of such. The Commission is aware that it must be cautious, especially once the campaign process has begun, not to change guidelines which will ultimately leave candidates unaware of the requirements. However, given the time it takes to promulgate regulations, such an amendment severely hampers the Commission's ability to clarify certain areas of the law in times when it can be proven that a specific need exists.

Sec. 15.13.042 (Re: Filing a Report of Limited or No Campaign Activity)

FCCS HB 230 included language which would allow candidates who did not intend to spend money or accept contributions to file a single report at the beginning of the campaign certifying zero monetary activity. The Commission suggests retaining this exemption provision but would include language allowing candidates to receive and spend up to $250 before the periodic reports set out in Sec. 110 would be required.

Sec. 15.13.060 (Re: Certification of Reports)

Sec. 15.13.060 requires a candidate or group to appoint a campaign treasurer and states that the treasurer or the candidate is responsible for filing the necessary reports. This requirement has caused several problems, in that, there are often times when the candidate or a group treasurer is out of town on the due date. The group may have several deputy treasurers yet none has the authority to sign the report.

Therefore, the Commission suggests that appropriate language be included in Sec. .060 which allows a deputy treasurer to sign the reports in the absence of the candidate or group treasurer.

AS 15.13.070(b) (Re: Limit on Cash Contributions)

It has been brought to the attention of the Commission that the prohibition against cash contributions which are in excess of $100 creates problems, especially for those in the bush areas. Often there are no facilities for purchasing money orders, cashier's checks or bank drafts.

Therefore, the Commission suggests that cash contributions in excess of $100 be allowed; however, for any contribution in excess of this amount, the candidate or group is required to issue a written receipt. By issuing a receipt, the contribution gets into the system, the paper trail begins, and the possibility of the cash being inadvertently misplaced is minimized.

Sec. 15.13.070(d) (Re: Exemption from Recording Requirements)

An amendment offered in FCCS HB 230 to AS 15.13.070(d) allows candidates to accept contributions of $5.00 or less without recording the name of the contributor. This amendment appears harmless enough; however, it does leave a very large "loophole," should an individual choose to circumvent the law. If this language were to be enacted, there would be nothing to prevent an individual from mailing a five dollar contribution on a daily basis to the same candidate in addition to donating the maximum amount allowed by the law. Such an amendment does not appear to be in line with the intent of the Act. If the impetus for inclusion of this exemption was to eliminate the recording of the names of contributors at events such as fund-raisers where the individuals in attendance are contributing small sums of money, please note that the Commission has adopted administrative regulation 6 AAC 29.326 which pertains to record-keeping requirements for fund raisers. This regulation eliminates the need to record the names of individuals donating to a fund-raiser so long as there are 25 or more persons in attendance and the cash amount received from any individual does not exceed $50.00.

Sec. 15.13.090 (Re: Identification of Political Communications)

Sec. 15.13.090 has long been an area of criticism and concern. Presently all political advertisements must be identified with the words "paid for by" the name and address of the group and the name of the campaign chairman of the group. Many candidates and groups feel that if there is a billboard which states "Vote for John Smith," and the placard is paid for by John Smith's campaign committee, requiring a full trailer which gives the name, address and treasurer of the committee is unnecessary and tantamount to bureaucratic harassment.

However, the flip side of the coin is the advertisement which says "Vote Against John Smith" or "John Smith Opposes The Curb Your Dog Law," and the authors fail to appropriately identify who is sponsoring the communication.

This past election has given the citizens of Alaska an extensive education regarding "negative campaign" efforts. And, it remains essential that such advertising be properly identified so that the public has the appropriate information.

Therefore, the Commission would suggest .090 be separated into two categories. Category One would allow candidates or a candidate's campaign committee to identify all political communications in support of the candidate with the phrase "paid for by John Smith for House" or "paid for by the Committee to Elect John Smith."

Category Two would address all other groups or individuals paying for political advertisements. The identification on those advertisements must include the name of the group, as well as a contact address or phone number for the group.

FCCS HB 230 offered an amendment which 1) eliminated the 30-day pre-election report; 2) changed the 7-day pre-election report to a 10-day pre-election report; 3) eliminated reporting of expenditures during the 24 hour reporting period; and, 4) changed the 24 hour reporting period to a 48 hour reporting period. Although the Commission is in agreement with the latter two amendments, it strongly opposes elimination of the 30-day report and a change in the 7-day report.

This opposition is based on the following reasons: First; one of the major objectives of this or any disclosure law is to make information available to the public at a time when it will have the most impact. Eliminating the 30-day pre-election report and changing a 7-day pre-election report to a 10-day pre-election report means that major portion of the campaign activity information will be submitted just before the election. Given the vagaries of the mail system, it is quite possible that with the proposed changes, many reports will not reach the Commissions offices until a few days prior to the election. As campaign costs increase, so will the time it takes to audit the reports and distribute the information in a meaningful fashion.

Secondly, the 30-day pre-election report gives candidates and groups the opportunity to review the requirements and learn the proper method of reporting. This knowledge and experience helps to ensure that subsequent pre-election reports contain no major errors and that therefore, the public has access to accurate information.

The Commission is aware that many arguments have been raised in opposition to the number of reports required by AS 15.13. However, it is the opinion of the Commission that such criticisms are based on the complexity of the information required rather than the number of reports required.

The Commission has discussed this problem with its staff and feels that many of these problems are of an administrative rather than a legislative nature. The Commission has instructed staff to revise the reporting forms so that the following changes will be accommodated: elimination of itemization of expenditures which are less than $100; revision of the reporting of accrued expenditures; and revision of the reporting of repayment of loans.

The only change the Commission would suggest to Sec. 110 would be to expand the 24 hour report (i.e., amendments to 48 hours) to include the 3 day period prior to the due date of the 7-day report. This 3 day period is presently uncovered by statute.

Sec. 15.13.120 (Re: Criminal Penalties)

FCCS HB 230 would no longer consider "making a communication to support or defeat a candidate without identification of sponsorship" a criminal offense. The Commission agrees that if a candidate fails to put the words "paid for by" on a flier or leaflet, it should not be considered a criminal matter, especially if the material distributed is supportative of a candidate. However, as shown by this past election there are individuals who will circulate material in opposition to candidates; this material is often fallacious, misleading and capable of

causing irrevocable injury to the candidate. When such communications are distributed without identification, the public has no basis for making a determination regarding the validity or intent of the sponsor, or of the candidate, bond proposition or ballot issue in question.

Therefore, the Commission suggests maintaining criminal sanctions for unidentified communications whether by an individual, group or candidate, if the purpose is to oppose a candidate, ballot issue or bond proposition.

FCCS HB 230 also reduces the Statute of Limitations for prosecution of a criminal act from four years to one year. The Commission strongly objects to such a revision primarily because the Commission is not an adjudicatory body. In many instances violations do not surface until several months after a report is filed. In off-election years only one report is required at the end of the calendar year. If there is substantial reason to believe a violation has occurred, the Commission's staff must make a preliminary investigation, forward its findings to the Commission, the Commission must hold a hearing -- or in some instances two (2) hearings, and only after this process has occurred may it forward a case to the Attorney General where the decision to dismiss or prosecute is made.

Hence, the Commission recommends the Statute of Limitations remain four years.

AMENDMENTS TO AS 24.45
THE REGULATION OF LOBBYING LAW

AS 24.45.041(c) (Re: Required Photograph)

AS 24.45.041(c) makes reference to a photograph of the lobbyist which may be submitted. AS 24.45.041(e) indicates that the directory of lobbyists shall include such photographs if submitted. As few lobbyists have ever supplied a photograph, and as the directories are simply xerox copies of the registration statements -- making inclusion of any photo difficult -- the Commission suggests that all reference to lobbyist photographs be deleted.

AS 24.45.051 (Re: Reduction of Itemization)

Section 37 of FCCS HB 230 amends AS 24.45.051 to clearly state what lobbyists are required to report, although it does not expand what is currently required. The Commission recommends that this section be amended to the effect that the lobbyist need report only aggregate amounts received for the reporting period and the year, for both salary, fee or retainer and expense disbursements and reimbursements. Thus, the expense portion would not be itemized on the report, merely summarized; however, the expense total would reflect reimbursements or disbursements for the same items that now need be listed individually. This change is also suggested for employer reports required under AS 24.45.051. The Commission contends that such a change would foster simplication of the reporting requirements and thus encourage more timely compliance by those subject to the law. Further, the Commission does not feel that this proposed change would undermine the intent of the original legislation, as the most critical financial information would still be available to the public.

Sec. 24.45.081(a) (Re: Reporting Periods)

Section 24.45.081(a) as amended by FCCS HB 230 would provide for quarterly reporting periods for lobbyists whether or not the legislature were in session. The Commission recommends that the existing situation be maintained, that is: the lobbyist be required to report monthly for the period that the legislature is in session and quarterly thereafter. This suggestion is based on the fact that if lobbyists report only on a quarterly basis throughout the session, the legislative session will be well advanced (mid to late April) before any information concerning financial activity of lobbyists is available to the public. Such a situation is viewed by the Commission as counter to the intent of the Regulation of Lobbying Law.

A final recommendation by the Commission concerning changes to AS 24.45 relates to including in the law language for employers which is comparable to that which presently exists in Sec. 041 for lobbyists. Current language in .041 states that the Commission may not renew lobbying credentials until all previously required lobbyist reports have been filed. By not registering a lobbyist for any employer who did not file all previously required employer reports, the Commission would possess a reasonable yet effective tool with which to foster compliance with the Law.

AMENDMENTS TO AS 39.50
THE CONFLICT OF INTEREST LAW

FCCS HB 230 contained only two sections amending AS 39.50. One of those amendments had been suggested by the Commission in prior years and continues to merit support; the other amendment is of dubious value. Beyond those two amendments, there are other areas of AS 39.50 which could be addressed and the Commission hopes will be addressed, particularly if it is the desire to develop an omnibus bill enacting a comprehensive review of the State's disclosure laws.

There is some "housekeeping" which will not be discussed here, except for general comments about the statute and the type of legislation it represents. Public expectation concerning the scope and jurisdiction of AS 39.50 is often disappointed because the title is a misnomer. AS 39.50 is a financial disclosure statute, not a "Conflict of Interest Law." Simply stated, AS 39.50 does not define a Conflict of Interest, it doesn't prohibit Conflicts of Interest, and it doesn't provide any guidance to public officials specifying the actions necessary to remedy a Conflict of Interest. The title gives rise to expectations that are not met and which would be less likely if the title were accurate. As a financial disloure law, AS 39.50 provides the public with access to information concerning the financial and business interests of key decision-makers on both the state and municipal level. The following discussion of amendments focuses on improvements to the existing financial disclosure law.

Sec. 39.50.020(a) (Re: Applicability)

In addition to concurring with the amendments proposed in FCCS HB 230 which would assure that all candidates will have Statements on file covering the same preceding year, there should be additional language requiring a termination Statement by those who leave a position which requires them to file. Presently, the public official who leaves government is not required to disclose financial and business interests for any part of the period he or she was in office since the previous Statement was filed. Thus, an official who resigns prior to the April 15th deadline for Statements covering the preceding calendar year can work a maximum of fifteen months for which financial disclosure is not required.

Two brief additions should be made to FCCS HB 230 concerning the fact that the requirement to file a municipal statement does not apply to the candidate for elective municipal office who has a current statement on file with the municipality in which he or she seeks office and that a state public official who files for state elective office is not required to file a statement at the time of becoming a candidate if he or she has a current statement on file with the Commission. The inclusion of such explicit language should be helpful in preventing the unfortunate situation of a candidate's declaration being invalidated due to simple confusion over the need to file a COI Statement.

Sec. 39.50.030(a) (Re: Contents of Statements)

Sec. 030(a) states that "...an asset or liability under $500, household goods, and personal effects need not be identified." The Commission recommends that this threshold be raised to $1,000 as current economic conditions make assets or liabilities under $1,000 of minimal value for public disclosure purposes. Further, this higher threshold is consistent with the "source of income" threshold the Commission is addressing in a later section of this discussion paper.

Sec. 39.50.030(b) (Re: Contents of Statements)

Section 46 of FCCS HB 230 eliminated requirements that public officials include in their Statements information concerning a non-dependant child. On the surface, that might appear to be sensible; however, the complete phrase in the statute is "a non-dependent child who is living with him," and, if only the words "or non-dependent child of his" are removed, the phrase "who is living with him" then modifies spouse or dependent child. The Commission is of the opinion that the financial concerns of an official's spouse or dependent child should be reported notwithstanding permanent residency status. Thus the Commission recommends that the entire phrase "or non-dependent child of his who is living with him" be removed from Sec. 030(b) where it appears.

Sec. 39.50.030(b) (1) (Re: Reporting Income over $100)

Currently, public officials or candidates must report the source of all income over $100, including capital gains, whether or not taxable, received by him or his spouse or children during the preceding calendar year. The Commission contends that this low threshold makes the reporting very burdensome for some individuals subject to the law without actually providing critical financial information. Further, the Commission asserts that by increasing the threshold to $1,000, truly significant sources of income would not be obfuscated by the inclusion of income sources of limited value.

Sec.39.50.030(b)(6) (Re: Loans or Loan Guarantees)

This subsection presently requires the reporting of only personal loans to the official and family members as indicated. Given the emphasis on the need to report business interests (i.e., partnership, professional corporation, and corporation in which there is controlling interest) in other sections of this law dealing with sources of income, contracts, and leases, this subsection should be amended to include the requirement to report the same information about business loans, loan guarantees, and creditors.

Sec. 39.50.030(b)(7) (Re: Contracts)

Subsection (7) as presently written requires State and municipal officers to report contracts they hold with the state, but not contracts they hold with the municipality. One could hardly believe that this

situation was intended; it must have been a drafting oversight. A municipal official's contract relationship (if any) with the municipality he or she serves is critical to adequate disclosure. Such could also be the case in situations in which a state official makes state funding allocation decisions regarding municipalities with which he or she has a contract. Therefore, the Commission suggests that the definition of "instrumentality of the state" be amended to include municipalities.

Sec. 39.50.050(d) (Re: Publishing of Reports)

In six years of experience there has never been a request for a copy of all the contents of all Statements; "publishing" all 500 plus Conflict of Interest Statements would only be wasteful. If a section concerning accessibility of the Statements is desirable, it should reflect the current practice of making copies of particular Statements upon request for the regular copying charge.

New Section Needed (Re: Municipal Officers)

As 39.50 does not provide for penalties for failure to report by municipal officers as it does for state public officials in sections .070, .089, .110, .120 and .130. The only penalty provision which applies to municipal officials provides a civil penalty for late filing. Short of the potential dangers of a charge of "wilful violation" under section .050, it would appear that a municipal official who doesn't file at all is in less jeopardy than one who simply files late.

Official Business

Alaska State Legislature

Senate

Judiciary Committee

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MARCH 1, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

SJR 6 - Proposing an amendment to the Constitution of the State of Alaska relating to sessions of the legislature.

SB 167 - "An Act relating to election campaigns and to the composition and responsibilities of the Alaska Public Offices Commission; and providing for an effective date."

SCR 37 - Relating to the use of computers and telecommunication systems.

SJR 13 - Relating to the ratification of an amendment to the Constitution of the United States defining Congressional representation and voting rights for residents of the District of Columbia.

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senators Rodey, Parr, and Ray. Senator Bennett was absent.

The first item brought before the committee was SB 167. Senator Rodey introduced the new amendment and gave an explanation of its intent.

Senator Parr introduced a second amendment to SB 167 and gave an explanation to the Committee.

Senator Ray suggests that the Committee put a definition section in giving a definition of "knowingly", and "reasonably complete report".

Shari Holmes, Alaska Public Offices Commission, testifies in favor of SB 167. In reference to Senator Rays suggestion of including a definition section, she stated that there should not be a definition section included so that the court could make its own determination.

Senator Parr expresses his objection to leaving the decisions to others, such as the court.

Senator Rodey offered language for "reasonably complete report" which is as follows: "reasonably complete report" means a report which accurately reflects the campaign contributions and expenditures of the candidate and which is free from significant omissions which are known to the candidate. There was no objection and the language was adopted.

Senator Ray moved that "knowingly" have the same definition as it does in the criminal code. There was no objection to its adoption.

Senator Ray moved that paragraph (a) and paragraph (b) of the committee substitute be reversed. There was no objection and the amendment was adopted.

Senator Ray moved that on page 11, line 14, "knowingly" be inserted between the words "or" and "falling".

Senator Parr suggested that after the word office, add "except State Legislature". The motion failed; Parr voted yea, Rodey and Ray voted nea.

Senator Ray moved that SB 167 be moved from committee. Senator Parr objected. As a result, Senator Rodey laid SB 167 on the table until Senator Bennett could be present for a majority vote.

Chairman Rodey next brought SCR 37 before the committee.

After a brief explanation of the bill by Senator Parr and a brief discussion, Senator Parr moved that the bill be passed from committee. There was no objection and the bill was passed with a unanimous do pass vote.

Chairman Rodey next brought SJR 13 before the committee.

Susan Clark, representing Alaska Association of University Women, testified in favor of SJR 13.

Paula Ziegler, League of Women Voters, came before the committee and testified in favor of SJR 13.

Senator Bennett entered the room for the vote of SB 167. Chairman Rodey excused Ms. Ziegler for the purpose of voting on SB 167.

Senator Ray again moved that SB 167 be passed from committee. Senators Rodey, Ray, and Bennett voted yea. Senator Parr voted nea. The bill was passed from committee with individual recommendations. Senator Parr signed do not pass, Senator Bennett signed no recommendation, Senators Ray and Rodey signed do pass.

Senator Bennett left to attend to his Finance Committee duties.

Chairman Rodey asked Ms. Ziegler to join the committee members and resume her testimony.

After brief discussion, Senator Rodey moved that SJR 13 be passed from committee. There was no objection. Senator Parr and Ray signed no recommendation, Senator Rodey signed do pass.

Chairman Rodey adjourned the meeting at 3:05 P.M.

SENATE AMENDMENT NO. _____

CSSB 167 (rules)

Page 12, line 10

AS 15.13 is amended by adding a new section to read: Sec. 15.13.121. EFFECT OF CERTAIN CONVICTIONS. (b) If a successful candidate for a state or municipal elective office is convicted of a misdemeanor described in AS 15.13.120(a) (1), (3), or (6), the election of that candidate shall be declared void by the director of the Division of Elections, and the candidate may not hold the office to which the candidate was elected. A vacancy occurring under this section shall be filled as required by law.

(a) When a candidate or an elected official is charged with a misdemeanor described in (b) of this section, the case shall be promptly tried and shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

Renumber sections accordingly.

Senators divided over bill to revamp campaign law

Anch Daily News 2/26

The Associated Press

JUNEAU — Divided over what action should be taken against candidates who violate campaign laws to gain public office, the Senate decided Thursday to return to committee a bill revamping the state's campaign financing law.

Earlier this week, senators voted to ax a state law that allows the Alaska Public Offices Commission (APOC) to void the election of a candidate who breaks a campaign law or whose campaign treasurer or deputy campaign treasurer violates a campaign law.

Repeated attempts led by Majority Leader Pat Rodey, D-Anchorage, to restore the APOC's clout have failed. Rodey proposed an amendment calling for the election of a state or local official to be voided if the candidate is convicted of breaking a campaign financing law, rather than just accused.

Fairbanks Sen. Charlie Parr, a candidate for lieutenant governor, proposed an amendment that would prevent the APOC from kicking elected state officials officials out of office for violating campaign laws.

The amendment did not come up for a vote.

Parr, D-Fairbanks, said it is common sense that prohibiting a governor from taking office is more serious than barring village council members from assuming their posts.

He said the will of voters should be carried out.

SENATE AMENDMENT NO. _____

CSSB 167 (rules)

Page 12, line 10

AS 15.13 is amended by adding a new section to read: Sec. 15.13.121. EFFECT OF CERTAIN CONVICTIONS. (a) If a successful candidate for a state or municipal elective office is convicted of a misdemeanor described in AS 15.13.120(a) (1), (3), or (6), the election of that candidate shall be declared void by the director of the Division of Elections, and the candidate may not hold the office to which the candidate was elected. A vacancy occurring under this section shall be filled as required by law.

(a) (b) When a candidate or an elected official is charged with a misdemeanor described in (a) of this section, the case shall be promptly tried and shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

Renumber sections accordingly.

#1 Knowing – as specified in AS

#2 "reasonably complete".
means a ~~material~~ report that is free from ~~any~~ significant omissions known to the candidate ~~that~~ of such a nature that the report does not accurately reflect the candidates contributions or Expenditure.

AMENDMENT TO CSSB 167 (RULES) By the Judiciary Committee

Page 11, line 14

Insert the word "knowingly" between the word "or" and the word "failing".

Page 12, line 10

AS 15.13 is amended by adding a new section to read:

Sec.15.13.121. EFFECT OF CERTAIN CONVICTIONS. (a) When a candidate or an elected official is charged with a misdemeanor described in (b) of this section, the case shall be promptly tried and shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

(b) If a successful candidate for a state or municipal elective office is convicted of a misdemeanor described in AS 15.13.-120(a) (1), (3), or (6), the election of that candidate shall be declared void by the director of the Division of Elections, and the candidate may not hold the office to which the candidate was elected. A vacancy occurring under this section shall be filled as required by law.

Page 13, line 25

15.13.130 is amended by adding the following paragraphs:

(8) "knowingly" means the same as that set out in AS 11.81.900(a)(2).

(9) "reasonably complete report" means a report which accurately reflects the campaign contributions and expenditures of the candidate and which is free from significant ommissions which are known to the candidate.

Renumber sections accordingly.

MEMORANDUM State of Alaska

TO: Shari Holmes
Chairperson
Alaska Public Offices Commission

DATE: February 28, 1982

FILE NO:

TELEPHONE NO: 276-3550

FROM: Wlison L. Condon
Attorney General

SUBJECT: Removal Provision
AS15.13.120

By: Elizabeth Page Kennedy
Assistant Attorney General

I have read Mr. Bradley's memo of February 25, 1982, concerning the possibility of a removal from office for violation of the campaign disclosure laws of a state official. I believe he somewhat misreads the intent of the court in its decison in State v. Marshall, 633 P.2d 227 (Alaska 1981), and other case law in this area.

The basic question on which most of the decisions have turned in this area is whether such a provision becomes a qualification requirement (to use our Court's terms) which must necessarily be set out in the Constitution (ie. age, eligibile to vote, etc.), or an eligibility requirement which may be set out by law (ie. filing papers for office, filing on time, etc.). If it is the former, then there is a constitutional problem. If it is the latter, the legislature may set out such provisions with no constitutional impediment. It is my contention that the provision of AS 15.13.120(b) is the latter, and that our Supreme Court, in the Marshall decision, looked with favor upon that idea.

The only authority our Court cited for the precedent that such a provision is a qualification requirement was a split decision in Florida. Maloney v. Kirk, 212 So.2d 609 (Fla. 1968). The Court then said:

> A majority of courts, however, have rejected this view. See Secretary of State v. McGucken, 22 A. 2d 693, 695 (Md. App. 1966); Saari v. Gleason, 148 N.W. 293, 294-95 (minn. 1914), reaffirmed in Pavlak V. Growe, 284 N.W. 2d 174, 177-78 (Minn. 1979); Laborer's Educational & Political Club-Independent v. Danforth, 561 S,W,2d 339, 344 (Mo. 1977); State ex rel La Follette v. Kohler, 228 N.W. 895, 907-08 (Wisc. 1930).(at 232)

The Court explained that in Pavlak and Danforth the laws went even further, declaring that a candidate who violated the law and was removed could not run for another public office. Since those laws stated a qualification requirement for the future office they could not stand, but the rest of the laws were held valid.

The Court then went on to state in no uncertain terms that they were persuaded by the majority cases, and that the forfeiture law only excludes those who "obtain their offices by unlawful means," and prevents them "from reaping the benefit of their wrong." Quoting Pavlak and other cases, the Court stated that the legislature has the authority to set out campaign practices and to promote fair elections, and that therefore implied the power to have unfair elections set aside. (p. 232). By passing a provision which would set aside an improper election, the legislature is not setting up a qualification to run for office, but an eligibility standard for the gaining and holding of that office.

Something should be said about the footnote referred to by Mr. Bradley. I do not read it as he does. The Court lumped together those covered by the eligibility requirement as "local election, the governor, the lieutenant governor, and to a 'judge seeking electoral confirmation.'" (at p. 231). The Court was speaking about the possible adoption of the idea that empowering courts to investigate and declare an election invalid was a separation of powers problem. The footnote merely says that adoption of such a standard would involve inconsistency, and they would prefer a "uniform application." Since the Court held in this case that the legilature could give such power to the judiciary as to local officials, they could not be intending to exclude everyone to be uniform, but rather to include everyone, even state legislative candidates.

For the above two reasons I do not believe that the question of the legislature's right to set out election law violations which include removal from office is as open as Mr. Bradley has suggested. I believe our court has been very clear in construing AS15.13 as an eligibility requirement for the gaining of the office, rather than as a qualification for the standing for that office, and has found no problem with either separation of powers or constitutionality.

Senate Amendment No. ____

CSSB 167 (rules)

Page 12, line 10

AS 15.13 is amended by adding a new section to read: Sec. 15.13.121. EFFECT OF CERTAIN CONVICTIONS. (a) If a successful candidate for a state or municipal elective office is convicted of a misdemeanor described in AS 15.13.120(a)(1), (3), or (6), the election of that candidate ~~is void~~ * SHALL BE DECLARED * and the candidate may not hold the office to which the candidate was elected. A vacancy occurring under this section shall be filled as required by law.

(b) When a candidate or an elected official is charged with a misdemeanor described in (a) of this section, the case shall be promptly tried and shall be accorded a preferred status by the courts to ensure a speedy disposition of the matter.

Renumber sections accordingly.

* BY THE DIRECTOR OF THE DIVISION OF ELECTIONS

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

February 25, 1982

SUBJECT: Effect of certain convictions
(Amendment to AS 15.13.120(b) in SB 167)

TO: Senator Charles H. Parr

FROM: Richard A. Bradley
Legislative Counsel

You have provided us with an amendment prepared for Senator Rodey which would (apparently) cause the repeal of AS 15.13.120(b) and its replacement with a new Sec. 121. The section had been viewed as moribund until recently; when I had been asked to draft a bill cleaning up the invalid provisions of AS 15.13, it was my usual custom to include the repeal of Sec. 120(b). And it is fair to note that until last fall, the commission has not sought to implement the provision.

But at that time, the commission filed a complaint in the Supreme Court against Joseph Marshall, a successful candidate for election to municipal office in Fairbanks. The Supreme Court enforced AS 15.13.120(b) according to its terms.

It has always been assumed that the legislature could by general law establish the requirement found in AS 15.13.-120(b) as to municipal elections. Municipalities are generally viewed as creatures of the state and the legislature may establish what qualifications it wishes for election to municipal office. In that context, what the Court said about the provisions is significant for members of the legislature as the section is reconsidered.

The Supreme Court analyzed the law under two premises: (1) the separation of powers concept; and (2) the exclusive qualifications test. See, State v. Marshall, 633 P.2d 227 (Alaska 1981).

Both were held inapplicable to Marshall.

Under the separation of powers concept, a body given by the constitution the authority to determine the qualifications of its members is the exclusive determiner of those qualifications. And it follows that if the judiciary intervenes to determine a state legislator's qualifications under a law similar to Sec. 120(b), a violation of the separation of powers doctrine is presented.

The Court noted that candidates elected to municipal office had no similar constitutional protection.

The Court said, in this context:

> Thus even if the forfeiture sanction conflicts with art. II, sec. 12, of the Alaska constitution insofar as state legislative elections are concerned, a question we do not reach, (footnote) it can nonetheless constitutionally apply to local elections.

633 P.2d at 231.

The footnote is somewhat cryptic; it notes that if the separation of powers argument is held applicable, Sec. 120(b) still applies to "local elections, the governor, lieutenant governor and to a 'judge seeking electoral confirmation'. AS 15.13.010. This possible inconsistency argues for a uniform application."

There may be a reason to treat legislators differently; the legislature possesses the constitutional mechanism to determine the qualifications of its members and the others mentioned do not.

But it is possible that the judiciary is concerned that the constitutional procedures for the retention of judges may be invaded and compromised by legislation such as that under consideration. Since the constitutional judges of the supreme and superior courts have a constitutionally established comprehensive scheme for their retention elections, there may be some belief on the Court that those procedures are the outer edges of legislative authority to regulate the election of judges. The argument I suggest is not stated, of course, and I may be wrong about the Court's hints regarding "inconsistency".

The second reason considered by the Court in the Marshall case was the suggestion that the grounds stated in the constitution for the election of officers are the only (the exclusive) qualifications that may be established. Under that analysis, laws such as Sec. 120(b) add additional qualifications. The Court stated that a "majority of the courts have rejected this view". [633 P.2d at 232]

Note that the Court's analysis is pure dicta; municipal officers have no constitutionally established qualifications for the offices they hold. To the extent that the Court considered legislative office and municipal office as presenting identical arguments, the Court misunderstood the argument. And another fact situation must be presented to the Court before a useful interpretation can be expected.

In my view, therefore, the argument that the legislature may (or may not) establish additional qualifications for election to constitutionally established public office in addition to those qualifications established constitutionally remains open. A copy of the opinion is enclosed for your review.

RAB:ljb

Enclosure

Anch Daily News 4/25/83

Keep the clout with the APOC

Voters — not legislators — created the Alaska Public Offices Commission in 1974 as a watchdog agency against election and lobbying abuse. But legislators are working on changes in the APOC that would take the teeth out of an agency few politicians like much, anyway. Strenuous public pressure may be necessary to ensure that the spirit of the 1974 voter initiative is preserved against legislative tampering.

The state Senate voted Monday to repeal existing law that provides for the voiding of the nomination or election of a candidate who violates — or whose campaign treasurer or deputy campaign treasurer violates — state campaign law. The effect is to remove the agency's strongest tool against campaign violations and abuse.

Critics of the law say it is unfair to penalize the candidate for his or her subordinates' mistakes. But Alaskans expect elected officials to be responsible not only for their actions but the actions of their aides as well. It does not seem unreasonable to expect the same diligence of candidates for elected office. Gutting the law only removes a candidate's personal stake in preventing violations that may well work to their advantage. It is hardly a means of improving the APOC. There is an implication, moreover, that campaign laws are somehow less important than other laws — and that strenuous enforcement is not worth the trouble or expense. The facts of political life speak clearly to a different conclusion.

The oldest truism in the game is that money talks, even if it does not dictate. Recent political wars bear witness. Nationwide, Republicans in 1980 massively outspent their Democratic counterparts, and achieved remarkable success. Locally, on the other hand, Rep. Joe Hayes massively outspent his opponents in the 1981 mayoral race but came up short, partly because some voters were disturbed at the number and size of Outside financial contributions revealed by APOC reports.

In any case, the APOC serves Alaskans by revealing the dynamics behind one of the major forces in electoral politics, and by enforcing campaign statutes and regulations. The public remains free to vote as it sees fit — but with a better comprehension of the finances behind a given candidate, and a stronger presumption of integrity in the process.

Responsible officials have tried for half a dozen years to correct difficulties that make the APOC a sometimes-unwieldy instrument. They have suggested changes to make penalties more appropriate and flexible; to tighten language in the law; to adjust contribution limits to inflationary times; and to lighten unnecessary reporting requirements. But legislative sponsors of reform have hesitated at bringing their measures to the floor of the legislature — for fear of losing the whole game while trying to improve the rules. Such is the unpopularity, among politicians, of an agency whose constituency exists mainly outside the halls of power.

That is why Alaskans themselves must lean on legislators who may try to water down the state's election watchdog under the guise of reform. The APOC remains as important today as ever, with 58 of 60 legislative seats, the governor's race and far-reaching voter initiatives all on the ballot this fall — and billions of dollars in public coffers. None of the nuisances experienced by candidates in complying with the law can overcome the advantages to the public in knowing at least some of the facts of political life.

Admittedly, the demand was not in the most sophisticated or legally proper form, but it was adequate. At that point, all interrogation should have ceased until an attorney was made available to the accused. The fact that the accused did not 'demand' an attorney does not persuade us that he was not exercising his rights. The accused was young, timid, and inexperienced in such situations; his failure to make a forceful demand for counsel does not dilute the fact that he made a request. The failure of the detectives to honor his request by immediately discontinuing their interrogation violated the defendant's constitutional rights under *Miranda v. Arizona*.

Id. at 12.

I do not take issue with the court's pronouncements that a police officer may seek clarification of the suspect's desires if the inquiry concerning counsel is equivocal. However, neither version of the testimony presented that situation. Lt. Olson testified that no inquiry at all was made, and Giacomazzi testified that a direct inquiry was made. Thus, I do not think that rule applicable in this situation.

I would remand the case for more explicit findings of fact and conclusions of law, in light of the discussion above.

STATE of Alaska, Alaska Public Offices Commission, Petitioner,

v.

Joseph D. MARSHALL, City Councilman for the City of Fairbanks and Assemblyman for the Fairbanks North Star Borough, Respondent.

No. 5614.

Supreme Court of Alaska.

Sept. 8, 1981.

The State Public Offices Commission brought petition before Supreme Court on original jurisdiction seeking to void election of local government officer. The Supreme Court, Connor, J., held that: (1) forfeiture sanction provided in state election campaign law was not unconstitutional; (2) absence of rulemaking by Commission for forfeiture sanction statute did not prohibit declaration that violation of election law voided election; (3) scienter was not required before forfeiture sanction could be imposed; and (4) officer's violation of election law by filing preelection report long after the election could not be characterized as trivial so as to avoid application of forfeiture sanction.

Election declared void.

1. Constitutional Law ⇐70.4
Elections ⇐21, 24

Statute calling for forfeiture of nomination or election of candidate violating state election campaign law was not unconstitutional as violation of separation of powers since office in question was a local legislative body and did not involve state legislative elections and since provision of reporting requirements allowed local government to opt out of coverage so as to avoid conflict with maximum local government. AS 15.13.010, 15.13.010(a), 15.13.120(b); Const. Art. 2, § 12; Art. 10, § 1 et seq.

2. Elections ⇐21, 24

Statute providing for forfeiture of nomination or election to office of candidate violating disclosure requirements of election law was not unconstitutional on basis that tying campaign disclosure requirements to forfeiture sanction impermissibly added qualifications for office since, rather than imposing impermissible eligibility requirements, forfeiture sanction merely excluded those who obtained office by unlawful means, that is, violation of campaign laws and thus precluded them from reaping benefit of their wrong. AS 15.13.110, 15.13.120(b).

3. Elections ⇐24

Legislature's authority to proscribe certain campaign practices and to promote fair elections logically and necessarily implies power to have unfair elections set aside. AS 15.13.120(b).

4. Elections ⇐231

Absence of regulation promulgated by State Public Offices Commission for statute forfeiting nomination or election of candidate violating state election campaign law did not prohibit enforcement of statute to void election of candidate elected to local offices for failure to timely file seven-day pre-election contributions and expenditures report since regulations were unnecessary to application and enforcement of the forfeiture sanction. AS 15.13.030, 15.13.030(10), 15.13.110, 15.13.120(b), 39.50.050(b).

5. Elections ⇐231, 317

Enforcement of forfeiture provisions of state election campaign law, which provided that person violating chapter was guilty of misdemeanor and election of candidate violating chapter was void, was not dependent on finding of scienter. AS 15.13.120.

6. Elections ⇐231

Election law filing deadlines are mandatory, and therefore substantial compliance is not sufficient, absent substantial confusion or impossibility. AS 15.13.110, 15.13.120.

7. Elections ⇐231

Local government candidate's violation of state election campaign law by filing preelection report long after the election could not be characterized as trivial so as to avoid application of forfeiture sanction since failure to file reports required before election frustrated purposes of requiring disclosure of campaign contributions and presented most egregious violation of campaign reporting laws and since candidate's preelection report was filed well after election. AS 15.13.110, 15.13.120.

Elizabeth Page Kennedy, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for petitioner.

Arthur L. Robson, Fairbanks, for respondent.

Before RABINOWITZ, C. J., and CONNOR, BURKE, MATTHEWS and COMPTON, JJ.

OPINION

CONNOR, Justice.

I. Introduction

This case involves a petition brought by the Alaska Public Offices Commission (APOC), before the court on original jurisdiction, which seeks to declare void[1] the election of Joseph Marshall to the Fairbanks City Council and Fairbanks North Star Borough Assembly. On December 30, 1980, the case was submitted to superior court judge Eben Lewis as a special master of this court. The Master's Report, released April 10, 1981, found a violation of disclosure laws but recommended solely prospective enforcement of the forfeiture of office provision, pending APOC promulgation of regulations clarifying application of this sanction.

A. Facts

Stipulated facts and the Master's findings establish that Marshall violated state election laws by failing to timely file a seven-day pre-election contributions and expenditures report during the October, 1980, Fairbanks municipal and borough elections. The report was due September 30, 1980. The election was held October 7, 1980. Marshall's seven-day report was filed, i. e., received, by the APOC on October 16, 1980 (sixteen days late), although it was prepared October 14, 1980.

Marshall admits receiving on September 28th an APOC letter, dated September 24,

1. AS 15.13.120(b) states:

"The nomination for, or election to, an office of a candidate who violates a provision of this chapter is void, and, if he is elected, the successful candidate may not hold office and the office shall be filled as required by law in the case of a vacancy."

1980, which informed him, in part, that his seven-day report was due September 30, 1980. After the deadline passed, the APOC, by letter dated October 6, 1980 (one day before the election), informed Marshall that his report was past due. The letter discusses civil fines for Marshall's filing delinquency, but makes no mention of a forfeiture of office sanction. The letter was not signed for (i. e., not received) until October 14th, the day Marshall finally prepared the report.

Marshall has a history of failing to timely file his contribution and expenditures reports for municipal and borough elections. During the 1974 elections, his seven-day pre-election report was filed twenty-two days late; no disciplinary action was taken. During the 1977 elections, his seven-day pre-election report was filed sixteen days late; again, no disciplinary action was taken.

Although Marshall, in the words of the Master, "had prior experience with the law requiring filing reports of campaign finances," the Master nonetheless concluded that Marshall's failure to timely file his 1980 pre-election report "should be characterized as careless or neglectful." This conclusion was based on a finding that "[n]o corrupt or fraudulent acts" were committed, and apparently on Marshall's testimony that he "just forgot" to file.

B. Statutory Framework

Candidates for elective office must disclose certain information in order to qualify for office. Among other things, the candidate must file up to five reports disclosing campaign contributions and expenditures: (a) one is due 30 days before the election; (b) one is due 7 days before the election; (c) one is due 10 days after the election; (d) one is due on December 31st of each year during which contributions or expenditures were made which were otherwise unreported; and (e) one is due within 24 hours of any contribution over $250 made during the week preceding the election. AS 15.13.110. Candidates for municipal office must comply with these reporting requirements unless the local government votes to take itself outside the scope of coverage. AS 15.13.010. Neither the city nor borough has exempted itself.

Three sanctions are available when a candidate violates the reporting requirements: imprisonment, civil fine, or forfeiture of office. Failure to make a statement or report, e. g., the seven-day pre-election report, is an explicit violation. AS 15.13.120(a)(1). Violations can be treated as misdemeanors, punishable by up to one year imprisonment or a maximum $5,000 fine. AS 15.13.120(a). Daily civil penalties may also result from late filing; the maximum amount for late seven-day reports is $50 per day. AS 15.13.125. Finally, an election or nomination "is void" if obtained concurrent with a violation of the chapter. AS 15.13.120(b).[2]

The APOC has, by regulation, provided for a schedule of civil penalties and for a process of assessment,[3] notice,[4] challenge,[5]

2. *See* note 1, *supra*. The provision continues: "When a violation of this chapter is alleged, the candidate's right to the nomination or the office may be tested in an action brought in the supreme court as a matter of original jurisdiction. All cases of this nature shall be in a preferred position for purposes of argument and decision, so as to assure a speedy disposition of the matter." AS 15.13.120(b).

3. The highest civil penalty is reserved for delinquent seven-day pre-election reports: (a) if the report is less than thirty days late, the candidate may be assessed $5 a day, up to a maximum of $50; (b) if more than thirty days delinquent, then the commission will, in its discretion and on a case-by-case basis, assess a civil penalty not to exceed $50 a day. 6 AAC 29.390(c)(1) and (B).

4. 6 AAC 29.390 states, in part:
"(c) Commission staff will send notice to each candidate or group of his or its delinquency within five days after the due date of the report.
(d) Upon receipt of a delinquent campaign disclosure report, commission staff will
(2) within five days of receipt of a delinquent report, send a notice of the civil penalty assessed against the candidate or group, and include
(A) a statement of the amount of the assessment; and
(B) an affidavit appeal form."

5. 6 AAC 29.390 continues:
"(e) A candidate or group subject to a civil penalty assessment may

resolution,[5] and appeal[7] regarding these penalties. No regulations have been promulgated which directly deal with the forfeiture[8] of election sanction.

II. Legal Issues

After first finding original jurisdiction to be a legitimate exercise of this court's power, the Master concluded, *inter alia*: (a) that the forfeiture sanction is a constitutional exercise of legislative power because it "does not determine eligibility for public office but rather establishes a mechanism to determine whether an eligible candidate may be permitted to enjoy that office . . ."; (b) that the statute does not require proof that the violation was willful, and, further, that there is "no indication of a legislative intent respecting the degree of willfulness" required; (c) that the statute fails to provide standards for testing the candidate's right to office; and (d) that AS 15.13.120(b), the forfeiture sanction, should be construed as directory rather than mandatory as applied to delinquent reporting violations, pending the promulgation of regulations detailing the sanction's applicability, and in any case should not apply to any 1980 elections.[9] We conclude that the statute is valid and that its plain language requires us to declare void Marshall's election to the city council and borough assembly.

(1) submit, within 30 days after receipt of the assessment notice described in (d)(2) of this section, an affidavit stating reasons for the late filing to show why a civil penalty should not be assessed; an affidavit

(A) is a statement in writing made under oath and upon penalty of perjury; and

(B) must be sworn to before a notary public, municipal clerk, court clerk, postmaster, or any other person authorized to administer oaths or, if none of the preceding alternatives is available, may be signed by the official without benefit of the oath so long as the official states, in writing, that the affidavit is signed under penalty of perjury; or

(2) pay, within 30 days after receipt of the assessment notice described in (d)(2) of this section, the penalty assessed.

(f) If a candidate or group subject to a civil penalty assessment for the late filing of a campaign disclosure report refuses, or fails, within the time required, to submit an affidavit or make payment, the commission staff will refer the matter to the attorney general for appropriate action. The commission will not hear an appeal if an affidavit is not filed within the time required."

6. 6 AAC 29.390(g) states:

"An affidavit timely filed with the commission will be considered at the next regular meeting of the commission. If a candidate or group's appeal is

(1) denied by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the civil penalty originally assessed be paid within 30 days after the date of the letter containing notification of the commission's decision; or

(2) accepted by the commission, commission staff will notify the candidate or group of its decision within 15 days, informing him or it that the civil penalty assessment has been waived and the matter is considered closed; or

(3) accepted, in part, by the commission, commission staff will notify the candidate or group of its decision within 15 days, and require that the reduced civil penalty assessment be paid within 30 days after the date of the letter containing notification of the commission's decision."

7. 6 AAC 29.390(h) states:

"A candidate or group may appeal the commission's decision to deny or partially accept reasons for lateness to the superior court within 30 days after his receipt of the notice under Rule 45 of the Appellate Rules of the Alaska Court System. If no appeal is made within 30 days and no payment is made, the matter will be referred to the attorney general for appropriate action."

8. "Forfeiture" is used here in the sense of relinquishing something not legitimately obtained, e. g., a "deprivation . . . of a right in consequence of the nonperformance of some obligation or condition." Black's Law Dictionary 778 (rev. 4th ed. 1968).

9. Marshall also argued that the APOC failed to follow its general statutory and regulatory procedures. AS 15.13.120(b), dealing with the forfeiture sanction, requires only that a violation be alleged and tested in the supreme court. See note 2, *supra*. This has been done, and the other procedures were not prerequisites

A. Constitutionality of the Forfeiture Sanction [10]

Although rarely stated as plainly as Alaska's law, numerous other states have similar forfeiture provisions.[11] Several jurisdictions have declared these statutes unconstitutional on one of two grounds, neither of which applies here.

[1] The first group of cases is premised on a separation of powers concept. State constitutions uniformly [12] declare that the members of each state legislative house shall determine the election and qualifications of its members.[13] Construing this constitutional grant of authority as *exclusive*, courts reason that empowering the judiciary to investigate and declare an election void violates separation of powers. *See Dinan v. Swig*, 112 N.E. 91, 92, 93 (Mass.1916); *Combs v. Groener*, 256 Or. 336, 472 P.2d 281, 282–83 (1970). *Contra, State ex rel. La Follette v. Kohler*, 200 Wis. 518, 228 N.W. 895, 908–09 (1930). This approach, however, is inapplicable here. Marshall was elected to local legislative bodies. No constitutional provision grants these bodies the type of authority granted the state legislative houses regarding a member's qualifications and election. Thus even if the forfeiture sanction conflicts with art. II, sec. 12, of the Alaska Constitution insofar as state legislative elections are concerned, a question we do not reach,[14] it can nonetheless constitutionally apply to local elections. Although Article X of the Alaska Constitution, governing local governments, intends "maximum local self-government," and mandates that a "liberal construction shall be given to the powers of local government," art. X, sec. 1, no provision makes a grant of authority analogous to that found in art. II, sec. 12 (*see* note 13, *supra*). The statute in question establishes an election procedure and we have previously noted that "it is within the province of the legislature to establish election procedures." *Silides v. Thomas*, 559 P.2d 80, 89 (Alaska 1977). Further, the provision of the reporting requirements that allows a local government to opt out of coverage, *see* AS 15.13.010(a), saves the statute from any unconstitutionality premised upon a conflict with maximum local self-government.

[2] The second view holding forfeiture statutes unconstitutional interprets constitutionally specified qualifications for office as exclusive, and reasons that tying cam-

10. The constitutionality of filing requirements and deadlines was upheld in *Silides v. Thomas*, 559 P.2d 80, 89 (Alaska 1977). In that case, we held that failure to timely file a designation of treasurer statement was fatal to a candidacy, and thus affirmed the lieutenant governor's action in striking a state house candidate's name from the primary ballot due to his failure to file. We noted that "[u]nder Alaska's Constitution, it is within the province of the legislature to establish election procedures." *Id.* at 89. If the failure to timely file can legitimately keep a candidate out of the race, it is logical that a similar failure can legitimately keep him or her from assuming an office otherwise won. However, the constitutionality of the legislative act empowering this court to declare an election void was not at issue in *Silides*.

11. *See, e. g.*, Ky.Rev.Stat.Ann. § 121.990(10) (Baldwin Supp.1980); Md.Elec.Code Ann. § 26–15(f) (1957); Minn.Stat.Ann. § 210A.42 (West Supp.1981); Ore.Rev.Stat. § 260.355 (1979); Wash.Rev.Code Ann. § 42.17.390(a) (1981 Supp.). Each of these statutes adds a requirement not found in Alaska's law (*e. g.*, violation must be willful (Ky.)); no forfeiture if failure to meet filing requirement found by court to be for just cause (Md.Elec.Code Ann. § 26–13(h)) (Supp.1979); no forfeiture unless candidate convicted for the gross misdemeanor of violating election laws (Minn.); no forfeiture unless violation "deliberate and material" (Oregon); no forfeiture unless violation "probably" affected the outcome (Wash.).

12. *See* Comment, The Legislature's Power to Judge the Qualifications of Its Members, 19 Vanderbilt L.Rev. 1410, 1410 & n.2 (1966).

13. Alaska's provision states:

"Each [house] is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members."

Alaska Const., art. II, sec. 12.

14. We note, however, that if the *Dinan* and *Combs* approach is taken, the forfeiture sanction would not apply to state legislative elections, yet would still apply to local elections, the governor, the lieutenant governor, and to a judge seeking electoral confirmation. AS 15.13.010. This possible inconsistency argues for a uniform application.

paign disclosure requirements to the forfeiture sanction impermissibly adds qualifications for the office. *See Maloney v. Kirk*, 212 So.2d 609, 614 (Fla.1968) (split decision). A majority of courts, however, have rejected this view. *See Secretary of State v. McGucken*, 244 Md. 70, 222 A.2d 693, 695 (1966); *Saari v. Gleason*, 126 Minn. 378, 148 N.W. 293, 294–95 (1914), reaffirmed in *Pavlak v. Growe*, 284 N.W.2d 174, 177–78 (Minn.1979); *Laborer's Educational & Political Club-Independent v. Danforth*, 561 S.W.2d 339, 344 (Mo.1977); *State ex rel. La Follette v. Kohler*, 202 Wis. 518, 228 N.W. 895, 907–08 (1930). Two of these cases, however, did adopt this view to the extent they were confronted with a statutory scheme prohibiting the candidate from holding either the contested office or other public offices for a future period of time. The added qualification theory may more appropriately apply to such a situation, when qualifications are constitutionally-based, because such statutes may be construed as adding the condition that to qualify for office one must never have previously violated campaign laws.[15]

[3] We are persuaded by those cases upholding the forfeiture sanction, which reason that rather than imposing impermissible eligibility requirements, the forfeiture sanction merely excludes those who obtain office by unlawful means, *i. e.*, in violation of campaign laws, and thus precludes them from reaping the benefit of their wrong. Our premise is that a valid election is an obvious, if unstated, constitutionally-based eligibility requirement for membership in a legislative body. *See Pavlak*, 284 N.W.2d at 180 n.4. The legislature's authority to proscribe certain campaign practices and to promote fair elections, recognized by this court in *Silides*, 559 P.2d at 89, logically and necessarily implies the power to have unfair elections set aside. *Pavlak*, 284 N.W.2d at 177–78.[16] *See State ex rel. La Follette v. Kohler*, 202 Wis. 518, 228 N.W. 895, 907, 910 (1930).

Neither of the two theories underlying a finding of unconstitutionality apply to the facts of this case. The forfeiture sanction does not conflict with any constitutional provision delimiting the qualifications of assembly or council members, nor with any provision reserving exclusive authority to determine a member's election to those local entities. Thus we uphold the constitutionality of AS 15.13.120(e) on these facts.

B. Absence of Regulations

[4] The APOC is given rulemaking authority in AS 15.13.030(10).[17] Marshall argues that this provision requires the promulgation of regulations before his election can be declared void. The Master agreed, although not specifying what the regulations might add. Requiring regulations as a prerequisite to enforcement would extend a rule recognized under limited circumstances in *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469, 480 (Alaska 1977), and in *Messerli v. State*, 626 P.2d 81, 88 (Alaska 1981), but rejected in *Silides v. Thomas*, 559 P.2d 80, 91 (Alaska 1977).

In *Silides*, two state house candidates' names were kept off the primary ballot due to asserted failures to timely file financial

15. *See Pavlak*, 284 N.W.2d at 177, 180; *Danforth*, 561 S.W.2d at 345; *State ex rel. Palagi v. Regan*, 113 Mont. 343, 126 P.2d 816, 826 (1942).

16. One case, dealing with a unique statutory procedure, took a third approach. In *Scheibel v. Pavlak*, 282 N.W.2d 843 (Minn.1979), the statute provided that the supreme court, after rendering a final decision, was to forward a copy to "the chief clerk of the house . . . or the secretary of the senate, as appropriate," which body was to then make the ultimate determination of the election's validity. *Id.* at 845. In light of the decision's lack of finality under this scheme, the court concluded that the statute unconstitutionally provided for advisory opinions, which in turn jeopardized separation of powers concepts. *Id.* at 846–50. *See also State ex rel. Smith v. District Court*, 50 Mont. 134, 145 P. 721, 722–23 (1914).

17. "The commission shall

> (10) adopt regulations necessary to *implement and clarify* the provisions of AS 24.45 [Regulation of Lobbying], AS 39.50 [Conflict of Interest] and this chapter [State Election Campaigns], subject to the provisions of the Administrative Procedures Act." (emphasis added).

AS 15.13.030.

disclosure and appointment of campaign treasurer statements (required by AS 39.50.020 and AS 15.13.060). 559 P.2d at 82–83. The candidate argued that the failure to promulgate regulations, per AS 15.13.030(10), prevented him from knowing where to obtain the filing forms. Notwithstanding the allegation of actual confusion, which is not present in this case, we nonetheless rejected the candidate's argument:

> "Although it would have been preferable to have promulgated regulations, we do not think any regulations *were necessary* to implement the mandatory filing provisions established by AS 15.13.060(c)." (emphasis added).

Id. at 91.

This rule was modified in *Falcon*, where we refused to enforce a financial interest disclosure requirement until regulations were promulgated. *Falcon* involved a constitutional claim of privacy. The issue was whether a public official, who was also a doctor, was required to disclose patient's names as "sources of income." After first finding a privacy protection in favor of the patients, and weighing this against the legitimate purposes underlying disclosure, we concluded that absent protective regulations the disclosure law impermissibly infringed on a constitutionally protected zone of privacy. 570 P.2d at 480.[18] Finally, *Messerli* also required the promulgation of regulations where necessary to protect constitutional guarantees of free speech. 626 P.2d at 88.

Reading these cases together leads to the conclusion that the absence of regulations is not fatal to enforcement of the sanction unless "necessary" to implement the sanction or to protect a constitutional right. No constitutional claim analogous to that in *Falcon* or *Messerli* is argued here. Regulations detailing application of the forfeiture sanction would be helpful, but the issue here is whether they are "necessary." Regulations could add procedural prerequisites, e. g., require explicit notice to the candidate that delinquent filing can or will result in forfeiture, as well as delineate when the sanction will apply. Further, regulations could add a mitigating aspect to the sanction. For example, the regulations pertaining to removal from office for failure to file financial disclosure create a "sliding scale" of sanctions based on the type of offense.[19]

18. The relevant statute, AS 39.50.050(b), provided:

> "The commission shall promulgate regulations to *implement and interpret* the provisions of this chapter; regulations or interpretation shall be within the intents and purposes of this chapter ...." (emphasis added).

19. The financial-interests disclosure statute requires two reports, one due 30 days after nomination or appointment, and one due "no later than April 15 or 15 days after" filing a federal income tax return (whichever is first) for each succeeding year. AS 39.50.020(a). AS 39.50.060(b) states, in part:

> "Any person failing to or refusing to comply with the requirements of this chapter, in addition to the penalties described, shall forfeit his nomination to office and shall not be seated or installed in office if he has not complied."

AS 39.50.070, 080, and .110 detail this sanction as it applies to executive employees, commission or board members, and judicial officers.

The APOC regulations implementing these provisions provide for a continuum of sanctions:

(1) If the initial statement is not timely filed, the official or candidate is informed by certified mail that his report is delinquent and that he is subject to criminal penalties, the Department of Administration is requested to freeze pay, per diem and travel payments and the attorney general is informed of the failure to file. *See* 6 AAC 29.115(a), .120(a).

(2) If the annual conflict-of-interest statement is not filed by April 15, the official is notified, and so is the attorney general. *See* 6 AAC 29.115(b), .120(b), .125.

(3) If the annual report becomes delinquent by 30 days, the official is notified he is delinquent "and that he is subject to removal from office," and the governor, judicial council, or attorney general [whichever is appropriate] is notified and requested to remove the official or, in the case of the attorney general, requested to take appropriate action. *See* 6 AAC 29.115(c), .120(c), .125(b).

In addition, fines are imposed for late filing. *See* 6 AAC 29.110, .135.

As regards municipal officials, referral to the attorney general for appropriate action is made when reports are 30 days past due. *See* 6 AAC 29.140(a) and (b).

The controlling statute does not specify or require a scaling of sanctions. Arguably such

Even though potentially helpful, however, we do not view regulations as *necessary* to the application and enforcement of the forfeiture sanction. The statute calls for the sanction in plain language and prescribes procedurally how it is obtained.[20] The absence of regulations is not fatal.

C. Scienter

[5] Many forfeiture provisions require that a violation be deliberate, willful, knowing, or be committed with some type of scienter.[21] Alaska's statute contains no such provision, simply stating: (a) "[a] person who violates a provision of this chapter is guilty of a misdemeanor," AS 15.13.-120(a); and (b) the election "of a candidate who violates a provision of this chapter ... is void...." AS 15.13.120(b). Marshall asks that we read into the statute a requirement that violations, to be actionable, must be knowing or willful.

The act was amended several times. The original version of AS 15.13.120, defining violations and providing, *inter alia*, for forfeiture, did not require willfulness for a failure to report to constitute a violation, nor as a prerequisite to forfeiture. *See* SB 388, 8th Legis., 2d Sess. at 10 (Feb. 18, 1974). The bill did require that an illegal contribution be accepted "knowingly" for it to constitute a violation. *Id.* at 9. Comparison of these provisions shows that the legislature's omission of such a requirement regarding disclosure reports was deliberate. With the exception of one intervening version of the bill,[22] a scienter element was never added, and the statute has always read, in relevant part:

> "(a) A person who violates a provision of this chapter is guilty of a misdemeanor .... A violation includes but is not limited to ...:
>
> (1) failing to make a statement or report required to be made ..., or failing to make a statement or report at the time ... [it] is required ...;
>
> . . . . .
>
> (6) knowingly accepting a contribution in violation of sec. 70 ....
>
> (b) The nomination for, or election to, an office of a candidate who violates a provision of this chapter ... is void ...."

AS 15.13.120.

The absence of a scienter element in the federal campaign laws led to the conclusion that willfulness is not required. *See United States v. Finance Committee to Reelect the President*, 507 F.2d 1194, 1197 (D.C.Cir. 1974). A similar result obtains here. The statute contains no scienter requirement and on these facts we decline to impose one. Even were we to do so, Marshall's willfulness is inferable from his prior experience with the election filing requirements. Given that history, the Master's finding that the failure to file was "careless or neglectful" borders on being clearly erroneous.

D. Application of the Forfeiture Sanction

[6] Courts have taken various approaches in efforts to mitigate the forfeiture sanction. Some hold that while filing is mandatory, the deadline for doing so is directory; thus, a late report is not a violation and the election is valid. *See Salley v. Smith*, 201 S.C. 338, 22 S.E.2d 6, 8 (1942); *Sjostrom v. Bishop*, 15 Utah 2d 373, 393 P.2d 472, 474 (1964).[23] These cases, how-

regulations are beyond the power of the APOC and thus are not a legitimate exercise of delegated authority. *See State ex rel. Public Disclosure Comm'n v. Rains*, 87 Wash.2d 626, 555 P.2d 1368, 1372–73 (1976). Starting with the premise that agency rules cannot amend the statute, the court in that case held that the commission was without power to promulgate filing deadlines absent a specific statutory authority concerning filing deadlines, even though charged with the general authority to adopt clarifying regulations.

20. *See* note 2, *supra*.

21. *See* note 11, *supra*.

22. In HCS CSSB 388 8th Legis., 2d Sess. (Mar. 14, 1974), substantially a campaign finance-limitation bill, a "wilful violation" with the candidate's "knowledge" was a precondition to forfeiture. *Id.* at 13. This version was subsequently rejected.

23. Building from these cases, the Master recommends that the *sanction* be considered directory rather than mandatory. No located case adopts such an analysis.

In addition to *Salley*, the Master relied on *Best v. Sidebottom*, 270 Ky. 423, 109 S.W.2d

ever, dealt with post-election reports, which could not affect the election whether timely or delinquent. Pre-election reports, on the other hand, do provide the electorate with information that may affect its decision; manifestly the timeliness of those reports is critical. The *Sjostrom* court relied on this reasoning in excusing a delinquent post-report:

> Where statutes governing the conduct of elections require something to be done before the election, so it might have some influence on the election's outcome, it is usually held that the time requirement is mandatory."

393 P.2d at 474. We have previously stated that election law filing deadlines are mandatory,[24] and therefore substantial compliance is not sufficient, absent substantial confusion or "impossibility." *Silides*, 559 P.2d at 86 (lack of clarity and impossibility warranted application of substantial compliance doctrine where one statute required that financial disclosure statement be filed in Anchorage, while other allowed declaration of candidacy to be filed in Juneau, but former statute contemplated contemporaneous filing; held: sufficient if report for Anchorage is in mail by due date). There are no allegations of substantial confusion or impossibility; the deadline for filing the report was mandatory and we agree with the Master's finding that Marshall's failure to timely file violated the election reporting statute.

[7] Another approach has been to recognize the validity of a forfeiture sanction, but to construe forfeiture as not applying when violations are technical, trivial, or insubstantial, or could not have affected the election. *See State ex rel. Hampel v. Mitten*, 227 Wis. 598, 278 N.W. 431, 434 (1938). *Contra, Cook v. Corbett*, 251 Or. 263, 446 P.2d 179, 184 (1968). Marshall's violation, filing a pre-election report long after the election, however, cannot be characterized as trivial and thus we need not resolve at this time whether a "trivial" violation can preclude applying the forfeiture sanction.

Disclosure of campaign contributions, and to a lesser extent of expenditures, serves substantial interests, which have been ably articulated by the United States Supreme Court:

> "First, disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voter in evaluating those who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.
>
> Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light

936 (1937). The precise issue in *Best* was whether a candidate could amend a pre-election expenditure statement after the election to "cure" the report (which was inaccurate, but timely) so as to avoid forfeiture. The court held he could. Whatever relevance *Best* holds here was eliminated by a subsequent opinion from the same jurisdiction. In *Dempsey v. Stovall*, 415 S.W.2d 419 (Ky.1967), the court held an election void for the failure to file pre-election reports until after the election, stating:

> "The filing of financial reports . . . is a mandatory requirement . . . . It is patent that a failure to file reports and designations required by the act until after the date of the Primary cannot be deemed compliance, substantial or strict. In this state of case it would be to emasculate the salutory provisions of the act to permit appellee . . . to receive the benefits of the nomination obtained in flagrant violation of the law's clear provisions."

Id. at 422. The court then declared the candidate's nomination election void.

24. *Silides v. Thomas*, 559 P.2d at 85 n. 12. *Accord* 2A C. Sands, Sutherland Statutory Construction § 57.21 (4th Ed. 1973):

> "Provisions of statutes governing the conduct of elections which have the purpose of securing a complete and enlightened vote or preventing fraud, where failure to comply is capable of influencing the outcome of the election, are mandatory."

of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in *Burroughs v. United States*, [290 U.S. 534, 54 S.Ct. 287, 78 L.Ed. 484] . . . Congress could reasonably conclude that full disclosure during an election campaign tends 'to prevent the corrupt use of money to affect elections.' In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice:

> 'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'

Third, and not least significant, record-keeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

The disclosure requirements, as a general matter, directly serve substantial governmental interests." (citation and footnotes omitted).

Buckley v. Valeo, 424 U.S. 1, 66–68, 96 S.Ct. 612, 657–658, 46 L.Ed.2d 659, 715 (1976),[25] quoted in *Messerli v. State*, 626 P.2d 81, 85 (Alas. 1981).

Failure to file reports required *before* the election frustrates these purposes, and presents a most egregious violation of campaign reporting laws. The deadlines for filing are mandatory, and the plain meaning of the statute makes the forfeiture sanction applicable. The only indication that the legislature may not have meant what it plainly said is whatever guidance is inferable from the fact the statute was passed in order to preclude a vote on a substantially similar initiative. *See Warren v. Boucher*, 543 P.2d 731 (Alaska 1975). In *Warren*, this court compared the disclosure legislation with the disclosure initiative and found them substantially similar; the initiative was therefore kept off the ballot. *Id.* at 735, 739–40. The dissent pointed out various differences, including that the act eliminated many enforcement provisions found in the initiative.[26] Arguably this evidences a legislative intent to have a weakly enforced act; however, the statutory language is clear and must prevail over tangential inferences. Further, we noted in *Warren* that "certain violations under each measure work a forfeiture of nomination or election." 543 P.2d at 737. If the legislature intended non-strict application, it could have so provided.

The statutory forfeiture of office provision applies here by its own clear language to Marshall's election. His violation was significant. His 1980 seven-day pre-election report was not simply a few days late; rather, it was not filed until well after the election. The sanction is a perfectly valid legislative enactment,[27] and the fact that its

25. *See also Brown v. Superior Court*, 5 Cal.3d 509, 96 Cal.Rptr. 584, 487 P.2d 1224, 1234 (1971) (insuring a better informed electorate, through disclosure, is a compelling state interest); *State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wash.2d 503, 546 P.2d 75, 78 (1976) (the purpose of contribution disclosure is to inform the public and elected representatives of expenditures by persons whose purpose is to influence or affect government decisionmaking).

26. For example, the legislature eliminated "[a]lmost all individual penalties for enforcement," *Warren*, 543 P.2d at 741; and eliminated

> "[a]ll power of the watchdog committee to delay certification of candidates or to bring charges requiring a delay of certification . . . [and eliminated] the power of the court to declare the second highest vote-getter elected where expenditure violations were found." (footnotes omitted).

Id. at 742.

27. Numerous courts have either recognized the validity of a forfeiture sanction, *see Laborer's Educational & Political Club-Independent v. Danforth*, 561 S.W.2d 339, 344 (Mo.1977); *State ex rel. Palagi v. Regan*, 113 Mont. 343, 126 P.2d 816, 825 (1942); *State ex rel. La Follette v. Kohler*, 228 N.W. 895, 907 910 (Wis. 1930), or have applied it to election law violations. *See Dempsey v. Stovall*, 418 S.W.2d 419, 422 (Ky.1967) (failure to file pre-election report until after election compelled forfeiture).

application may have unpleasant consequences for an otherwise duly elected official does not justify interpreting it in a manner incompatible with the plain meaning of the statute.[28]

Marshall's election to the city council for the City of Fairbanks and to the assembly for the Fairbanks North Star Borough is declared void.

Robert N. WAINSCOTT, Individually and as Personal Representative for the Estate of Deborah K. Wainscott, Appellant,

v.

Charles J. OSSENKOP and State Farm Fire and Casualty Company, Appellees.

No. 4476.

Supreme Court of Alaska.

Sept. 11, 1981.

Appeal was taken from the entry by the Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., of summary judgment against, and denial of summary judgment in favor of, the husband, individually and as personal representative of the estate of his daughter, in an action under an automobile policy. The Supreme Court, Rabinowitz, Chief Justice, held that: (1) for purposes of determining whether the daughter was a resident of the husband's household, and thus was within the coverage of the policy, was to be determined by whether the husband intended to be permanently separated from his daughter, not whether the husband intended to be permanently separated from his wife; (2) the definition of the term "his household" in the coverage provision was ambiguous; and (3) the daughter should have been found to be an additional insured since it was entirely reasonable for the husband to expect, during the interim period before the bonds of marriage had been officially dissolved and before any provisions had been made for the care and custody of the minor children of the marriage, that his policy could continue to include within its coverage those who lived within the household for which he continued to be the sole source of support, even though he had recently, and perhaps permanently, discontinued his actual physical presence there.

Reversed and remanded with instructions.

Connor, J., dissented with an opinion.

1. Insurance ⇐435.8(4)

In action under automobile policy wherein it was necessary to determine whether daughter was resident of husband's household, and thus covered as "additional insured," after husband and wife separated, issue was not intention of husband and wife as to whether they planned to reconcile or remain apart; rather, focus was on relationship between husband and his daughter.

2. Insurance ⇐435.8(4)

For purposes of determining whether daughter was resident of husband's household, and thus covered as "additional in-

Secretary of State v. *McGucken*, 244 Md. 70, 222 A.2d 693, 695–97 (1966) (failure to timely appoint campaign treasurer designation compelled forfeiture); *Cook* v. *Corbett*, 251 Or. 263, 446 P.2d 179, 185 (1968) (false statements in ads were deliberate and material violations and compelled forfeiture), modified in *Combs* v. *Groener*, 256 Or. 336, 472 P.2d 281, 282–83 (1970) (forfeiture sanction unconstitutionally infringes legislature's exclusive power to determine members' election, except as applied to primary contests, which was the situation in *Cook*).

28. We reject Marshall's argument that because the sanction has never been enforced before it cannot now be applied. Equal protection is not violated by unequal enforcement of a valid law absent a showing of intentional discrimination. *Silides* v. *Thomas*, 559 P.2d 90, 89 (Alaska 1977). No such showing has been made here.