HJR

7

MSG 84-00009209 PRTY 1 02/02/84 08:49:28 ORIG: LA10 IN= 0002 OUT= 0001
FROM: PAT CORBETT ANC MINORITY OFFICE TO: SUZZANE TRYCK FISCHER'S OFFICE
TARGET: LJBJ SUBJ: AG HEARINGS PAGE 0001

M E M O R A N D U M

TO: SUZANNE TRYCK
SENATOR FISCHER'S OFFICE
FROM: PATRICIA CORBETT
ANCHORAGE MINORITY OFFICE
DATE: FEBRUARY 2, 1984
SUBJ: HB 456 ELECTED ATTORNEY GENERAL - HEARINGS
HAVE LINED UP THE FOLLOWING TO TESTIFY:

MORE _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG 84-00009209 PRTY 1 02/02/84 08:49:28 ORIG: LA10 IN= 0002 OUT= 0001
FROM: PAT CORBETT ANC MINORITY OFFICE TO: SUZZANE TRYCK FISCHER'S OFFICE
TARGET: LJBJ SUBJ: AG HEARINGS PAGE 0002

RANDALL BURNS 272-7469
AK BAR ASSOCIATION
FRANK FLAVIN 264-0528
FOR HIMSELF (IS STAFF FOR COMM ON JUDICIAL CONDUCT)
JOHN HAVELOCK 786-1810W 337-8305H
FORMER AG UAA JUSTICE CENTER
JUDGE TOM STEWART 465-3426W 586-1220H
CONSTITUTIONAL CONVENTION DELEGATE
CONTACTED THE FOLLOWING. INTERESTED BUT CANNOT TESTIFY.
FORMER AG'S

MORE _ BACK _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

MSG'84-00009209 PRTY 1 02/02/84 08:49:28 ORIG: LA10 IN= 0002 OUT= 0001
FROM: PAT CORBETT ANC MINORITY OFFICE TO: SUZZANE TRYCK FISCHER'S OFFICE
TARGET: LJBJ SUBJ: AG HEARINGS PAGE 0003

EDGAR PAUL BOYKO	272-5464	
WILL CONDON	STEVE CALLED	
JOHN RADER	272-3913W 243-3749H	
AV GROSS	HAVE NOT LOCATED HIM	
JUDGES		
ALLEN COMPTON	264-0554	
VIC CARLSON	264-0418	
JUSTIN RIPLEY	264-0414	
TOM STEWART	465-3426	
BEV CUTLER	745-4284	HAVE NOT CONTACTED
BUD CARPENETI	465-3420	YOUR CONTACT
COURT SYSTEM		
CAROL BAEKEY	264-0554	MAGISTRATE SERVICES
ART SNOWDEN	264-0547	YOUR CONTACT IN JUNEAU
KARLA FORSYTH	264-0634	GENERAL COUNCIL

MORE _ BACK _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

COURT SYSTEM CONT'D
FRAN BREMSEN 279-2526 JUDICIAL COUNCIL
FRANK FLAVIN 264-0528 COMM ON JUDICIAL CONDUCT
LAWYERS
TRIAL LAWYERS ASSOCIATION
GREG GREBE PRES279-9571
AK BAR ASSOCIATION
RANDALL BURNS 272-7469
POLICE
AK PEACE OFFICERS ASSOCIATION
SGT KALAR PRES 283-7879

POLICE CONT'D

POLICE CHIEF ASSOCIATION
COL HENDERSON PRES 269-5584 (F&W PROTECTION IN DPS)
BRIAN S PORTER 264-4379
GENERAL PUBLIC & ORGANIZATIONS
AK LEGAL SERVICES
ROBERT HICKERSON 272-9431
ACLU349-5543 MESSAGE PHONE
NANCY GORDON276-3550 AG FOR HUMAN RIGHTS
DOLORES WEILER

MSG 84-00009209 PRTY 1 02/02/84 08:49:28 ORIG: LA10 IN= 0002 OUT= 0001
FROM: PAT CORBETT ANC MINORITY OFFICE TO: SUZZANE TRYCK FISCHER'S OFFICE
TARGET: LJBJ SUBJ: AG HEARINGS PAGE 0006

GENERAL PUBLIC CONT'D
LEAQUE OF WOMEN VOTERS 274-8477
BLANCHE STEPHENS
HOLLI PLOOG561-1158
DIANE O'CONNELL
BEV ISENSON
GORDON SMITH
VIRGINIA SAMSON
JOHNNY ELLIS
END OF LIST

BACK _ NXT MSG U/R/S _ PREV MSG U/R/S _ RESEND _ CANCEL _

STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

May 26, 1983

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

Re: Elected AG

Dear Senator Fischer:

You have requested that the Department of Law respond to several aspects of CSSSHJR 7 (Jud). In particular, you have made inquiry regarding:

1. The fiscal impact CSSSHJR 7 (Jud) would have on state government operations;

2. A statement of my position on the proposed legislation;

3. Information on the pattern of elected attorneys general compared to appointed attorneys general in the United States;

4. Information on increased costs associated with utilizing "in-house" counsel for the executive agencies in addition to the elected attorney general.

Attached is a fiscal note and fiscal analysis prepared by my office with respect to CSSSHJR 7 (Jud). As with all fiscal notes, this represents a good faith estimate of the likely increase the proposed legislation would have on the operating budget. In preparing this fiscal note we used conservative estimates of the probable costs an elected attorney general would encompass. If anything, the costs may be higher.

I personally am opposed to CSSSHJR 7 (Jud). I have lived and practiced law in our state for most of my adult life. I am absolutely convinced that the needs of all Alaskans are best served by having an appointed attorney general. Election of one cabinet level official makes no more sense than a complete election of all commissioners.

03-C5LH

The Governor, as the state's principal executive officer, needs to have a responsive and reliable Department of Law. I think good management requires an appointed attorney general, but more importantly common sense suggests that the attorney general selection be made by appointment. In our vast state, with disparate interests and citizens, the administration of state government requires a strong governor. The last thing our state needs is an elected attorney general who may have a personal or political agenda which varies from the position of the Governor. The friction between the two elected officials can lead to a less responsive state bureaucracy with a diffuse accountability to the electorate.

I could relate anecdotes which illustrate this from other jurisdictions having elected attorneys general. Instead, I would rather provide a quotation from the National Municipal League:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state. 1/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. In my opinion, the Governor of Alaska needs the flexibility and discretion that is implied in an appointed attorney general. Anything less will inevitably drive a wedge between the Governor and the Department of Law to the detriment of the citizens of our state.

You also requested comparative information on elected versus appointed attorneys general. Our research indicates that the Attorney General is popularly elected in forty-two states.

1/ National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

The Attorney General is appointed by the Governor in six states, three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is selected by the Legislature while Tennessee's Attorney General is selected by the Supreme Court of that state. Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

In response to your question on use and cost of additional counsel for the executive branch in states having elected attorneys general, I am of the opinion that this use (and cost) depends on the relationship between the Governor and the elected Attorney General. In a situation where an elected Attorney General and Governor are cooperative, cordial and share a similar political philosophy, the need for additional counsel will be reduced. Regrettably, this is not always the situation. A 1976 study by the National Governors' Conference explored the role of Governors' legal advisors. The study, which was based primarily on a questionnaire to these advisors, found problems in this relationship:

> In many States the relationship between the Governor and the Attorney General is not a smooth one. In addition to whatever political differences there may be between them, there are several operational areas of potential conflict. These include conflicts over the extent to which the legal talent employed by state agencies should report to the Attorney General or to the agencies; concern that the Governor cannot easily deal with the Attorney General because the Attorney General normally provides "yes-no" answers rather than discussions of the legal risk of various options; and the possible frictions that may normally occur in an attorney-client situation. Nevertheless, all but two of the legal advisors reported that they seek informal opinions for the Governor from the Attorney General. 2/

2/ National Governors' Conference, Center for Policy Research and Analysis, LEGAL ADVICE FOR THE GOVERNOR, 7 (November, 1976).

While I cannot estimate the actual use and cost of additional counsel to oversee the elected Attorney General on behalf of the Governor, I am convinced there will be some additional use by the Governor's office even in the best of times. I sadly regret that the citizens of our state will be required to pay for this additional layer of bureaucracy.

In addition, the heads of executive departments will hire their own attorneys. Thus, there will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Thus, the courts and the public will be confused about state policy on many issues. In addition, the cost for such counsel could easily exceed $1.0 million annually, within just a few years.

As always, I would be delighted to answer any additional questions you may have.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

Attachment

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7(Judiciary)
Title: "...election of the Attorney General."
Sponsor: House Judiciary (Orig.-Uehling)
Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*		*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services Division
Date: May 26, 1983

Approved by Commissioner: Richard I. Pegues /for/ Norman C. Gorsuch, Attorney General
Date: May 26, 1983
Department: Department of Law

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/8

CSSSHJR No. 7 (Judiciary)
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19		Travel	2,500	
	(1) Admin. Officer R17		Contractual	24,100	
	(1) Clk. Typist R8		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	18,100	
	(3)	113,805		54,600	168,405
Personnel					
	(1) Personnel Mgr. R21		Travel	2,500	
	(2) Personnel Analysts R16		Contractual	54,200	
	(1) Training Officer R18		Commod.-ongoing	14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time	12,000	
	(1) Payroll Clerk R10		Equip.-one-time	24,100	
	(1) Clk. Typist R8				
	(8)	255,307		107,200	362,507
Property/Supply					
	(1) Materials Mgr. R21		Travel	2,500	
	(1) Purchasing Agent R18		Contractual	19,600	
	(1) Supply Officer R16		Commod.-ongoing	7,200	
	(1) Clk. Typist R8		Commod.-one-time	6,000	
			Equip.-one-time	19,300	
	(4)	161,843		54,600	216,443
Finance/Accounting					
	(1) Finance Officer R21		Travel	2,500	
	(1) Acct. Supervisor R16		Contractual	19,900	
	(1) Acct. Clerk R10		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	3,600	
	(3)	120,427		35,900	156,327

Attorney Timekeeping					
	(1) Accountant R18		Travel	1,800	
	(3) DP Clerks R11/R9		Contractual	33,000	
			Commod.-ongoing	7,200	
			Commod.-one-time	6,000	
			Equip.-one-time	16,000	
	(4)	111,023		64,000	175,023
Records Management					
	(1) Records Analyst R18		Travel	1,800	
	(1) Records Supervisor R15		Contractual	81,200	
	(1) Records Handler R12		Commod.-ongoing	9,000	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
			Equip.-one-time	81,000	
	(5)	180,432		180,500	360,932
Data Processing/Communications					
	(1) DP Mgr. R21		Travel	2,500	
	(1) Programmer Analyst R18		Contractual	319,900	
	(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	41,600	
	(3)	142,116		373,900	516,016
Duplication Svcs.					
	(1) Duplication Mgr. R19		Travel	1,000	
	(1) Printing Tech. R17		Contractual	74,500	
	(2) Machine Operators R12		Commod.-ongoing	57,200	
			Commod.-one-time	6,000	
			Equip.-one-time	154,800	
	(4)	163,768		293,500	457,268
TOTAL	(34)	1,248,721		1,164,200	2,412,921

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.

Testimony of

JUDGE THOMAS B. STEWART

before the

SENATE STATE AFFAIRS COMMITTEE

HJR 7:
Constitutional Amendment
Election of the Attorney General

May 26, 1983

Members Present:

Senator Vic Fischer, Chairman
Senator Tim Kelly
Senator Bill Ray
Senator Pat Rodey
Senator Arliss Sturgulewski

TRANSCRIPT OF PROCEEDINGS

SENATOR FISCHER:

We next have Judge Tom Stewart with us. I might just, as a matter of introduction, say that Judge Stewart was a member of the Legislature in the 1950s, helped organize the Alaska Constitutional Convention, served as a secretary for the Convention, subsequently served in the State Senate, has been a very prominent judge, and is now before us. Tom?

JUDGE STEWART:

Thank you, Mr. Chairman. The question of an elected Attorney General, I think should be looked at from several different aspects of the issue. I would begin with a question of history, and it's kind of a truism that those who do not look at history are condemned to its errors. The history of this issue, just in Alaska, is that we had an elected Attorney General for forty-six years, from 1913 until 1959. The people who considered whether as a state we should continue to have an elected Attorney General included twenty-seven former members of the Legislature who had functioned under an elected Attorney General for many years in their combined experience, including an Attorney General who was elected, Ralph J. Rivers, and who came to the convention convinced that the Attorney General should be elected, and upon the basis of the debate there and the information that he learned from it, voted against the election of the Attorney General. The appointed Attorney General decision was ultimately made. Look to the history of other states, and I recall very clearly when a gentleman named Thomas

E. Dewey, who was the Governor of New York, came to Alaska in the late 1940s or the early 1950s, and met with political leaders in Alaska, and one specific word of advice that he made after his years of experience as Governor of New York and a leading prosecutor was: "Whatever you do, do not elect the Attorney General in your state."

Now, another aspect besides history, and we'll touch a little bit on the history of election of attorneys general in other states, but I think before doing so I would like to look a little bit at the nature of his functions. By nature, it's an error to label the Attorney General the attorney for the people. In fact he is not that. He is the attorney for the executive branch of the government. A governor is the Governor for the people, but not the Attorney General. A citizen cannot go up to his office and say, "I want an opinion." He will of necessity say to you: "we don't give opinions for the citizens; we give opinions for the executive branch and its agencies."

And I might pause a moment there; there's been an unfortunate history in Alaska that the Legislature has somehow looked to the opinions of the Attorney General as guidance for the meaning of the laws. In my judgment that's a serious error. The Legislature should have its own attorney. It should not look to the Attorney General.

Now, the Attorney General is like any other professional attorney. He is an attorney. His professional duty is to his client. His professional duty is to help his client realize his client's needs, not to make an independent judgment of what he thinks is right or wrong in

terms of his client's needs, but what his client thinks his needs are, and as a professional person, he should be looking to that.

Now, there's a mistaken view. Perhaps you might believe that somehow the Attorney General's opinions, which are published, are usually, hopefully, well considered, thought out, researched, and detailed--somehow have the quality of a judicial opinion. They do not. They are fundamentally different in nature, because they are not framed on an adversary basis. They are not based upon two sides genuinely, seriously opposed to one another, summoning every argument on the opposite sides. Rather they are framed like any other attorney's opinion, based on what he thinks his client's interests are. He's an advocate of that side, where a judge sits and listens to both sides. A judge, in effect, listens to cross examination. He listens to the argument, to the criticism of the argument, and to the counter criticism of the argument. The Attorney General has none of that in the framing of his opinions, and his opinions should <u>not</u> be viewed as if they had behind them the adversary process, which is fundamental to a judicial opinion or descision.

It's an error to think that the Attorney General can somehow satisfy pressing, immediate political concerns about a particular issue. What gives him the ability to try to read in what the newspapers are printing, or what he sees on TV, or what some constituents are saying, that that is the opinion of the majority of the people? He is not elected to determine what the policy of the government should be. I mean, he's not chosen to do that, whether elected or otherwise. He's chosen

to be the legal advisor to the executive branch, and he should not frame his opinions based on current political views. That's the Governor's choice. The Governor is the one that is chosen to fix the policy of the executive branch of the government, or it's the Legislature's choice in making the laws. Now, it would be a sorry state of affairs if the Attorney General framed his opinions, not on what his client desires to do to answer the public need, but what somehow is his reading of political opinion and then to color his professional legal opinion based on that kind of a view.

I have substantial personal experience. I served under an elected Attorney General for better than three years -- under two of them: under elected Attorney General Ralph J. Rivers and under elected Attorney General J. Gerold Williams. What the Attorney General decides cuts across the whole spectrum of the executive branch. He advises each and every department, and believe me, gentlemen and ladies, from what I saw in the operation of that office, his opinions, when he is elected, are colored by what he thinks that commissioner should do on a specific issue when he is going to be answering to the people in an election, rather than on what the policy of the executive branch will be in general.

If the Attorney General is elected you have built in conflict with the Governor. Wherever they have different personal views, there is going to be an expression of opinion and the Attorney General will determine what he thinks will help him politically, and not what will help the Governor on the other side; so that his opinions are going to

be

affected by his personal posture in the eyes of the electorate, rather than on what the right legal decision should be for the benefit of the executive branch. An elected Attorney General has a constant ambition to be the Governor, and is, therefore, necessarily in conflict with the elected Governor.

The problem of putting this issue to the vote of the people is that it's an issue that should not be viewed as an independent question. The question is not just whether the Attorney General should be elected. The question is what kind of an executive branch do you want? Now, you hear it commonly said that under our constitution we have a strong Governor. I suggest to you that that's a mistaken characterization. What you have is an accountable Governor, a Governor who can be held to account for the conduct of the entire executive branch. His strength is a function of the Legislature: what kind of laws the Legislature passes, what kind of limitations the Legislature puts on his authority. If you put an independent elected officer there, whose functions will cut across the entire executive branch, you can no longer hold the Governor accountable for what he does, because he may try to take action and the Attorney General can thwart it by his opinion.

Another reason why it should not go to the electorate is because there is an inadequate opportunity to debate this issue. You cannot put it in the perspective of what kind of an executive branch do you want. It's, as I say, an issue that should not

and cannot rationally be considered independently of that larger question of the nature of the executive branch, and if you put it in the form of the resolution that's before you today, that's not what will be before the voters to consider and to look at.

In my judgment, there is no sound argument in saying that forty-five states have elected attorneys general. If you get an elected Attorney General, believe me, you will not change it. You can never, as it were, take away an elected Attorney General from the electorate. I suggest to you that before you consider this serious question, that you should invite some governors from some other states where this system functions to testify to you what happens in their states. Invite the Governor of New York, invite the Governor of California, invite the Governor of Washington, and see what they say to you about how an independent person in that office frustrates the capacity of the executive branch to operate.

Now, let me turn back to history just a little bit. There was some mention made previously about the Attorney General of the United States, and in history the form of our state government is patterned from the federal government. I don't think you've ever heard a serious voice raised that the Attorney General of the United States should be elected. He is the advisor to the President and to the executive branch as such. He is the supervisor of the prosecutors for the nation. But I don't think you hear any responsible, reliable voice on the national scene say that somehow the government of the United States would be better if the Attorney General were elected. And the

history of that idea is two hundred years old.

Now, I'd just like to quote to you a few sentences from the Federalist Papers, number 70, written by Alexander Hamilton in 1783. It was addressed to the people of the State of New York at the time in the Federalist Papers: "There is an idea which is not without its advocates that a vigorous executive is inconsistent with the genius of republican government." Now, I would remind you, republican government is representative government. It is a government where you, the elected representatives, are asked to make wise decisions, decisions that the electorate cannot in its forum make, but which take the kind of consideration that you people can give it. "Enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation." "Energy in the executive is a leading character in the definition of good government." Now, energy is the capacity to make a decision and carry it out. If you elect the Attorney General, you will deprive the Governor of that energy. His energy will go to fighting with the enemy within his own ranks. His energy will be directed to the intrafamily warfare within his cabinet generated by having an independent and conflicting voice there.

The situation is not unlike having two governments in one city, like the City of Anchorage and the Borough of Anchorage, the City of Juneau and the Borough of Juneau. If you look to the history of our local governments, most of our major communities have wisely consolidated those into one, so that the energy of the people that run them is not in fighting between people in their own community

but in addressing the principal problems. And I say to you that you will deprive the executive branch of its capacity for energy, for making effective decisions, if you saddle the Governor with an opponent within his system.

I don't want to prolong the discussion, but I'm utterly, totally convinced that to allow this to happen, and if you put it to the vote of the people it's likely to happen, because you can't adequately debate it in that forum, you can't put it in its perspective. If you allow it to happen, you will have forever damaged the quality of Alaskan government.

SENATOR FISCHER:

Tom, thank you very much for your solid statement. Are there any questions or comments? Senator Ray?

SENATOR RAY:

Judge Stewart, you brought up something that's been on my mind for a good length of time, and that is the problem with the Attorney General's opinions, and why the Legislature seeks his opinions and puts a great deal of credibility toward them. For the last, oh, at least ten years or more, it would appear to me that most attorneys general have thwarted the will of the Legislature. When we pass a bill that has not been appreciated by the Administration, or the Attorney General finds that the Administration doesn't want to administer, he writes a letter saying it's unconstitutional and, therefore, saying that he is sworn to uphold the laws of the State of Alaska, that he is advising the Administration not to administer it. This is contrary to the

Constitution of the State of Alaska. It says that he cannot do that. He must seek judicial counsel, and the judiciary makes the determination, and you have validated that for me today; and in our times of acquaintance and friendship, I want to thank you most for that statement you made right there. But how can we approach the Attorney General, or how do we overcome that? That's why we seek the opinions, and that's why a lot of times we're more or less bound by them, or we are asking them, rather than just to have our--we must come to a compromise position rather than just to have our bills go down the tube or not be administered.

JUDGE STEWART:

May I respond, Mr. Chairman?

SENATOR FISCHER:

Certainly, Tom.

JUDGE STEWART:

I think you're absolutely right, and it seems to me, as I began, you should look at history. How does it happen that the Attorney General has such a pervasive influence in the Alaskan government? Well, when we were a young territory, a small territory, the Attorney General was the only legal officer to look to. The Legislature had no staff, and there grew up an aura, somehow, of something sacrosanct about the Attorney General, and it should not be. He should be no more and no less than a legal advisor to the Governor. Now, the Governor might be a better lawyer than the Attorney General. You might very well have a Governor who's a lawyer and who's elected, who

knows more about the law, who does his research more carefully, is a better professional person than the Attorney General. He should be able to look at the Attorney General's opinion and say, "thank you, Mr. Attorney General, you're good and I want to keep you on, but I'm not going to pay any attention to that opinion because I don't think it's any good." He should be free to do that. The Legislature should never be bound by the Attorney General in any way. My advice, apart from this thing, is to hire yourself counsel: a counsel to the Senate and a counsel to the House; and rely on them for your legal opinions about the validity of your legislation, not the Attorney General, because his duty is elsewhere.

SENATOR RAY:

But, isn't there some way? You see, where we're thwarted a lot of times is that he will advise the Governor that in his opinion it's unconstitutional, and that, therefore, the Governor should not administer it. And a lot of times, by the time an individual legislator, who knows he's in the right, he does not have the wherewithal to bring court action.

JUDGE STEWART:

To take this to the court?

SENATOR RAY:

Yeah. And a lot of times when they do, by the time the two years that it would take to get before the courts, in a lot of instances, it's a moot question. The guy has lost. So you just more or less seek a compromise position with the Administration in order to resolve and

get a half a loaf, rather than to take the whole thing.

JUDGE STEWART:

There's nothing that I know of in the constitution that says the Governor has to follow the opinion of the Attorney General. Just because the Attorney General says it's unconstitutional does not make it so. I know of no way you can answer that question that you put, Senator Ray, without persuading the Governor in the particular instance that he should not follow the opinion of the Attorney General in that instance--or to go get another opinion if you can, to have the Attorney General take another look at it.

SENATOR RAY:

Well, if there is nothing that makes that opinion sacrosanct, that says the Governor can't support the legislation if he wants to ...

SENATOR RODEY:

Well, it might be in his best political interest to have the Attorney General say that and ...

JUDGE STEWART:

That may very well be.

SENATOR RAY:

In fact he might even seek that opinion out so that he can avoid doing what is politically distasteful to him.

JUDGE STEWART:

If that's the case, I think you have no alternative but to summon some resource to get yourself into court. I'd be glad to answer any other ...

SENATOR FISCHER:

Thank you, Tom.

SENATOR STURGULEWSKI:

Mr. Chairman, just a comment, that this is a most provocative discussion of how the Attorney General has evolved and just in the few years that I've been here, why, you see us going to [Legislative] Legal Services when we want one opinion, we go to the Attorney General for another. I think this is worthy of some exploration. It seems to me, one, you could, of course, go to court more often to challenge that opinion, but I almost think it would have to be, to bring change, an evolutionary kind of a thing where you would, in fact, either give the status to your current legal services or hire independent counsel that would be available for advice and you start going there as opposed to what we do now, which is more and more to go to the Attorney General for their opinion. But that is interesting and it would be interesting maybe to see a catalog of things that you might do to bring about the kind of change that will bring more balance there. We use the Attorney General as the final word in a lot of cases.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Because we're forced to. We're forced to reach a compromise position because otherwise he will say in his opinion it's unconstitutional and then the Governor will say, okay, and it's not administered; and then we're up to the wall unless we have the financial resources, the

backing of somebody to get it into court in a rapid fashion and then have the court act upon it.

SENATOR STURGULEWSKI:

Your asking what?

SENATOR RAY:

See, well, I even had the crazy idea one time of asking for advisory opinions from the Supreme Court or from the Superior Court - just advisory opinions on matters of great state interest and just have them give an opinion of whether it was constitutional or not, and they didn't want to do it.

JUDGE STEWART:

Mr. Chairman, may I just add one note, without extending your time, in response to Senator Sturgulewski's comments? I think it might be useful for you to look to the pattern of some other states. Now, the Legislative Affairs Agency is one thing that does its research, and it has its attorney that advises it as a staff. What I'm talking about is counsel to the Senate ...

SENATOR STURGULEWSKI:

That's right. We haven't done that.

JUDGE STEWART:

... and counsel to the House, and you will find that pattern in other states. I happen to know quite well an excellent counsel to the California State Senate, and the nature of the function of his office is very important in the success of legislation in that state, and to giving the - of necessity - the majority in the Senate that chooses him, legal

opinions.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Then, again, Tom, we've been, at various and odd times, in the Legislature, either one house or the other, or both acting in concert, have hired outside counsel in particular areas of interest or to answer specific questions, but then we're always criticized by the public or by those critics of the Legislature who declaim to the public that the Legislature spends its money, they have hired these people to do thus and such, and it gives the appearance that the Legislature is a bunch of spendthrifts when they have legal officers they could go to like the Attorney General which they in error believe is available to us to tell us what is constitutional and what isn't.

JUDGE STEWART:

I appreciate the opportunity to appear, Mr. Chairman.

SENATOR FISCHER:

I really appreciate your testifying.

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE POUCH V, JUNEAU 99811
SENATOR VIC FISCHER, CHAIRMAN (907) 465-4954

May 26, 1983
3:00pm

Butrovich room
Capitol Bldg.

Members Present

Senators Vic Fischer, Chair
Senator Rodey
Senator Ray
Senator Sturgulewski
Senator Kelly

HB 39, Relating to political campaign tax contribution credit

---

Bob Manners, NEA Alaska, testified in favor of continuing the current political contribution tax credit unchanged. He recommended that the bill be signed do not pass.

A CS was before the committee which was not adopted by the committee. Instead, the version that was passed by the House was addressed.

Senator Rodey stated that he was opposed to the bill in any form.

Tom Cashen, I.B.E.W., testified against the bill. He said that it was not a good bill for the working people of Alaska.

Cherie Shelley, APEA, concurred with the previous two witnesses.

Senator Ray moved and asked unanimous consent to move the House version of the bill out of committee with individual recommendations.

The bill was moved out of committee with individual recommendations.

HJR 7, Relating to the Election of the Attorney General
TELECONFERENCE PORTION OF THE HEARING

Representative Rick Uehling, sponsor of the bill, testified in favor of the bill. He stated that the reasons for introducing the bill were that if an Attorney General were elected by the people, that person would be more responsible to the people.

Senator Ray asked Rep. Uehling a hypothetical question concerning the working relationship between the Governor and the Attorney General if

they were of different political parties.

Rep. Uehling stated that he felt that the two officials would be able to work together, and that the Attorney General would still be able to serve the people.

Senator Vic Fischer related the experiences of other states that have elected Attorney Generals. Often times, he said, the office becomes a political stepping stone.

Judge Tom Stewart testified against this resolution (the transcription is included with the minutes of this meeting).

John Havelock, Director of Legal Studies at the University of Alaska and former Attorney General, also testified against this resolution. He stated that the Attorney General is the Chief prosecutor of the state, and that the Attorney General is the Attorney to the Governor. This he gave as one reason why the Attorney General should not be elected.

Art Robeson, President fo the Tanana Bar Association, testified that the Alaska Bar is about 9-1 against electing an Attorney General.

Senator Sturgulewski made a motion to move the resolution out of committee with individual recommendations

There was no objection. The resolution moved out of committee.

The meeting adjourned at 4.15pm.

By.

Suzanne Dyck,
Researcher

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 9981
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM February 14, 1983

SUBJECT: Elected attorney general
(SSHJR 7)

TO: Representative Rick Uehling

FROM: Billy G. Berrier
Director
Division of Legal Services

Sections 1, 2 and 3 of this bill are correlative amendments necessary to conform existing material in the constitution to the new material added. It is easier to follow if the analysis of these follows the new material.

The material in Sec. 4 is the new material which is added to Article III of the Constitution. It consists of new sections 28 - 34.

Sec. 28 provides there shall be an attorney general and establishes qualifications. The attorney general must be:

(1) at least 30 years of age;

(2) a qualified voter;

(3) a resident for the five years immediately preceding filing;

(4) a United States citizen for seven years;

(5) licensed to practice law in this state; and

(6) possess other qualifications prescribed by law.

Sec. 29 provides for election of the attorney general. The ballot is nonpartisan and candidates file for office. The initial election is the primary and the two highest voter getters at the primary appear on the general election

Grants Pass, Oregon
February 19, 1983

TO MY FRIENDS IN THE ALASKA LEGISLATURE:

Almost thirty years ago I proposed that the state of Alaska elect its attorney general. Although my proposal was finally rejected by the Constitutional Convention in 1956, I have never abandoned my conviction that the attorney general should be "the people's attorney," elected by and responsible to the citizens of Alaska.

For that reason, I am pleased to support House Joint Resolution 7, which proposes an amendment to the state constitution providing for the election of the attorney general. HJR 7, if approved by both houses, would allow the electorate to determine the nature of the state's highest law enforcement officer.

I urge every legislator to fully consider this important bill. If you decide that your constituents deserve a truly impartial attorney general who is ultimately responsible to the people, then I encourage you to support the passage of HJR 7.

Thank you for your attention.

Respectfully,

Frank Barr

FRANK BARR
Delegate, Alaska Constitutional
Convention (1955-56)

STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION

State or other jurisdiction	Governor	Lt. governor	Secretary of state	Attorney general	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget	Civil rights	Commerce	Community affairs	Comptroller	Consumer affairs	Corrections	Data processing
Alabama	CE	CE	CE	CE	CE	G	...	CE	G	CS	...	G	G	AG	(a-1)	G	CS
Alaska	CE	CE	(a-4)	GB	(a-5)	GB	A	A	A	A	G	GB	GB	A	A	A	A
Arizona	CE	...	CE	CE	CE	G	GS	B	GS	L	A	G	...	AG	(a-1)	GS	AG
Arkansas	CE	CE	CE	CE	CE	G	(a-10)	(a-11)	AG	AG	...	(a-12)	G	(a-10)	(a-1)	GS	GS
California	CE	CE	CE	CE	CE	GS	(b)	GS	GS	GS	G	GS	GS	CE	GS	GS	G
Colorado	CE	CE	CE	CE	CE	G	GS	GS	A	GS	A	A	A	A	(a-1)	GS	(a-8)
Connecticut	CE	CE	CE	CE	CE	G	GE	GE	GE	A	B	GE	A	CE	GE	GE	A
Delaware	CE	CE	GS	CE	CE	GS	GS	GS	GS	GS	GS	AG	AG	A	AG	GS	AG
Florida	CE	CE	CE	CE	CE	GS	GS	CE	CE	A	A	GS	GS	CE	A	GS	...
Georgia	CE	CE	CE	CE	A	G	GS	CE	GS	G	...	B	G	CE	G	B	A
Hawaii	CE	CE	(a-4)	GS	...	GS	...	GS	(a-25)	GS	...	(a-7)	...	GS	(a-25)	(a-3)	(a-22)
Idaho	CE	CE	CE	CE	CE	G	GS	GS	GS	G	BGS	G	(a-11)	CE	(a-1)	BGS	(a-5)
Illinois	CE	CE	CE	CE	CE	G	GS	GS	GS	G	GS	GS	GS	CE	(a-1)	GS	A
Indiana	CE	CE	CE	SE	CE	G	G	(a-4)	G	G	G	(a-4)	A	...	AT	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	(a-3)	GS	GS	A	GS	(a-1)	(a-3)	CS
Kansas	CE	CE	CE	CE	SE	GS	GS	B	GS	CS	B	GS	A	A	A	GS	A
Kentucky	CE	CE	CE	CE	CE	GS	G	CE	G	AG	B	G	G	(a-10)	A	AG	AG
Louisiana	CE	CE	CE	CE	CE	GS	G	CE	GS	GS	...	GS	GS	(a-8)	GS	GS	A
Maine	CE	...	CL	CL	CL	G	GLS	GLS	GLS	AG	B	(a-27)	G	AG	GLS	AG	CS
Maryland	CE	CE	GS	CE	CL	GS	...	GS	AGS	GS	GS	A	AG	CE	A	AGS	(a-5)
Massachusetts	CE	CE	CE	CE	CE	G	G	G	G	AG	AT	G	G	G	G	G	A
Michigan	CE	CE	CE	CE	CE	GS	GS	B	GS	(a-8)	B	GS	...	...	(a-1)	B	(a-8)
Minnesota	CE	CE	CE	CE	CE	G	GS	GS	BS	GS	GS	(g)	(a-11)	A	GS	GS	A
Mississippi	CE	CE	CE	CE	CE	GS	...	SE	GS	B	...	(a-29)	B	(a-30)	A	B	B
Missouri	CE	CE	CE	CE	CE	GS	GS	GS	AS	A	B	A	(a-11)	A	GS	GS	A
Montana	CE	CE	CE	CE	A	G	GS	GS	(a-11)	G	G	G	(a-11)	A	G	A	A
Nebraska	CE	CE	CE	CE	CE	G	GS	GS	GS	A	B	GS	(a-11)	A	(a-1)	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	BG	A	(a-8)	G	G	G	CE	A	G	A
New Hampshire	CE	...	CL	GC	CL	GC	(a-5)	GC	GC	A	B	GOC	GOC	GOC	(a-1)	GOC	B
New Jersey	CE	...	GS	GS	GS	GS	...	BG	GS	GS	A	GS	GS	GS	GS	GS	A
New Mexico	CE	CE	CE	CE	CE	GS	GS	(b)	GS	G	G	GS	AG	G	(a-1)	A	A
New York	CE	CE	GS	CE	A	G	...	GS	G	G	G	GS	GS	CE	GS	GS	(a-6)
North Carolina	CE	CE	CE	CE	CE	G	G	CE	GS	AG	(a-8)	G	A	(a-22)	A	G	AG
North Dakota	CE	CE	CE	CE	CE	G	A	CE	GS	A	...	G	...	A	A	GS	A
Ohio	CE	CE	CE	CE	CE	G	GS	GS	A	GS	GS	GS	(a-11)	(a-21)	(a-1)	GS	A
Oklahoma	CE	CE	GS	CE	CE	GS	...	GS	GS	G	B	G	G	AG	B	B	...
Oregon	CE	...	CE	SE	CE	G	GS	GS	AG	A	CS	GS	A	A	A	AG	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G	GS	GS	GS	AG	A	AG	AG
Rhode Island	CE	CE	CE	CE	CE	G	GS	(a-12)	G	GS	B	GS	GS	A	BS	GS	A
South Carolina	CE	CE	CE	CE	CE	CE	(a-22)	SE	B	B	B	(a-27)	A	CE	B	B	(a-22)
South Dakota	CE	CE	CE	CE	CE	GS	G	GS	A	G	GS	GS	(a-27)	CE	(a-1)	AG	A
Tennessee	CE	(i)	CL	SC	CL	G	(a-10)	G	G	A	B	G	(a-11)	CL	A	G	A
Texas	CE	CE	GS	CE	CE	GS	...	SE	BS	G	...	(a-27)	GS	CE	A	B	B
Utah	CE	CE	...	CE	CE	G	GS	GS	GS	G	...	GS	GS	CE	AG	BA	AG
Vermont	CE	CE	CE	SE	CE	SL	GS	GS	GS	GS	(a-1)	A	GS	(a-10)	(a-1)	GS	CS
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB	...	GB	A	GB	(a-29)	GB	GB
Washington	CE	CE	CE	CE	CE	GS	(a-6)	GS	A	GS	B	GS	(a-11)	(a-22)	(a-1)	GS	B
West Virginia	CE	...	CE	CE	CE	GS	(a-10)	CE	GS	A	GS	GS	A	(a-10)	(a-1)	GS	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	B	GS	(a-8)	A	GS	(a-11)	(a-8)	(a-1)	A	(a-8)
Wyoming	CE	...	CE	GS	CE	G	G	B	G	G	...	(a-27)	(a-27)	G	(a-1)	BG	A
Guam	CE	CE	...	GS	A	...	GS	GS	(a-38)	GS	...	GS	G	(a-8)	A	GS	A
Puerto Rico	CE	...	GB	GS	GS	GS	...	GS	(a-21)	G	G	G	A	G	GS	GS	...
Virgin Islands	CE	CE	...	GS	...	...	(b)	GS	(a-4)	G	GS	GS	(b)	...	GS	GS	(b)

Note: Salary figures for these officials may be found in Table 18.

Key:

CE —Constitutional, elected
CL —Constitutional, elected by legislature
SE —Statutory, elected
SL —Statutory, elected by legislature
L —Selected by legislature or one of its organs
SC —Statutory, elected by state supreme court

Appointed by:	*Approved by:*
G —Governor	...
GS —Governor	Senate
GB —Governor	Both houses
GE —Governor	Either house
GC —Governor	Council
GD —Governor	Departmental board
GLS —Governor	Appropriate legislative committee & senate
GLG —Governor & Lt. governor	...
GOC —Governor & council or cabinet	...
LG —Lieutenant governor	...

Appointed by:	*Approved by:*
AT —Attorney general	...
A —Agency head	...
AB —Agency head	Board
AG —Agency head	Governor
AGC —Agency head	Governor & council
AS —Agency head	Senate
ALS —Agency head	Appropriate legislative committee & senate
AGS —Agency head	Governor & senate
ASH —Agency head	Senate president & house speaker
B —Board or commission	...
BG —Board	Governor
BGC —Board	Governor & council
BGS —Board	Governor & senate
BS —Board or commission	Senate
BA —Board or commission	Agency head
CS —Civil Service	...
ACB —Nominated by audit committee	Both houses

Table 6

ATTORNEYS GENERAL AND SECRETARIES OF STATE: QUALIFICATIONS FOR OFFICE

State or other jurisdiction	Attorneys General						Secretaries of State			
	Minimum age	U.S. citizen (years)	State resident (years)	Qualified voter	Licensed attorney (years)	Membership in the state bar (years)	Minimum age	U.S. citizen (years)	State resident (years)	Qualified voter
Alabama	25	7	5	...	...	...	25	7	5	*
Alaska	...	*	...	...	...	...	(a)	(a)	(a)	(a)
Arizona	25	10	5	...	...	...	25	10	5	*
Arkansas	...	*	*	*(b)	...	...	...	...	*	*(b)
California	18	...	*	...	*(c)	*(c)	...	...	...	*(b)
Colorado	25	*	2	...	*	...	25	*	2	*
Connecticut	21	*	6 mos.	*	10	10	21	*	*	*
Delaware	...	...	...	...	...	...	...	...	...	...
Florida	30	*	7	*	5	5	30	*	7	*
Georgia	25	10	6	*	7	6	25	10	6	...
Hawaii	...	*	1	...	...	...	(a)	(a)	(a)	(a)
Idaho	30	*	2	*	*	*	25	*	2	...
Illinois	25	*	3	...	...	...	25	*	3	...
Indiana	...	*	*	*(b)	*	...	...	...	...	*(b)
Iowa	...	...	...	...	...	...	...	...	*	...
Kansas	...	*	...	...	*	*	...	...	...	*(b)
Kentucky	30	2	2	...	8	5	30	...	2	...
Louisiana	25	5	5	*	5	5	25	5	5	*
Maine	...	...	...	...	...	...	...	...	...	...
Maryland	...	...	10	*(b)	10	10(d)	...	...	...	...
Massachusetts	...	*	5	*	*	*	18	*	5	*
Michigan	18	*	30 days	*	*	*	...	*	30 days	*(b)
Minnesota	21	3 mos.	30 days	*	...	...	21	*	*	*
Mississippi	26	*	5	*	5	5	25	5	5	*
Missouri	...	...	...	...	...	...	...	...	...	...
Montana	25	*	2	...	5	5(d)	25	2	2	...
Nebraska	21(e)	...	*(d)	...	*(d)	...	18	*	*	...
Nevada	25	2	2	*	...	...	18	2	2	*
New Hampshire	...	...	...	...	*	*	...	...	...	...
New Jersey	18(f)	...	*	...	*	*	...	...	...	...
New Mexico	30	*	5	...	*	*	30	*	5	*
New York	30	*	5	...	*(d)	...	...	...	...	...
North Carolina	21	*	30 days	*	...	...	21	*	1	*
North Dakota	25	*	*	*	...	...	25	...	30 days	*
Ohio	18	30 days	30 days	*	...	...	...	...	...	*(b)
Oklahoma	31	*	10	*	...	...	31	*	10	*
Oregon	...	...	...	*(b)	...	...	18	*	*	*
Pennsylvania(g)	30	*	7	*(d)	*(d)	*	...	...	...	...
Rhode Island	18	30 days	30 days	*	...	...	18	30 days	30 days	*
South Carolina	...	...	*	*(b)	...	...	21	*	1	*
South Dakota	...	*	*	*(b)	*	*	...	...	...	...
Tennessee	...	...	...	...	...	...	...	...	...	...
Texas	...	*	...	...	*	*	...	*	*	...
Utah	25	*	5	*	*	*	(a)	(a)	(a)	(a)
Vermont	...	...	...	...	...	...	...	...	...	*(b)
Virginia	...	...	*	*(b)	*	...	...	...	...	...
Washington	...	*	*	*(b)	*	*	...	*	*	*(b)
West Virginia	25	5	5	*	...	...	18	5	5	*
Wisconsin	...	...	...	...	...	...	...	...	...	...
Wyoming	...	...	*	...	4	4	25	*	*	*
American Samoa	...	...	...	...	...	...	(a)	(a)	(a)	(a)
Guam	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	(a)	(a)	(a)	(a)
Northern Mariana Is.	...	...	...	...	5(d)	...	(a)	(a)	(a)	(a)
Puerto Rico	21(e)	...	...	...	*(d)	*(d)	...	...	...	...
Virgin Islands	...	*	...	...	*(h)	...	(a)	(a)	(a)	(a)

N.A.—Not available.

(a) No secretary of state.

(b) Although there may be no specific requirement for minimum age of U.S. citizen, it can be inferred that the individual must be 18 years old and a U.S. citizen since he or she must be a qualified voter. In addition, some states have residency requirements to be a qualified voter and these can be found in the table "Qualifications for Voting."

(c) No statute specifically requires this, but the State Bar Act can be construed as making this a qualification.

(d) Implied.

(e) Implied, since the attorney general must represent the state in all legal matters and, therefore, must be an attorney. To be an attorney in Nebraska and Puerto Rico, one must be at least 21 years old.

(f) Implied, since the attorney general must be a practicing attorney and to be an attorney in New Jersey, one must be at least 18 years old.

(g) These qualifications took effect for the first time with the attorney general entering office in 1981.

(h) Must be admitted to practice before highest court of a state or territory.

Table 9

ATTORNEYS GENERAL: PROSECUTORIAL AND ADVISORY DUTIES

State or other jurisdiction	Authority to initiate local prosecutions	May intervene in local prosecutions	May assist local prosecutor	May supersede local prosecutor	Issues advisory opinions: To state executive officials	Issues advisory opinions: To legislators	Issues advisory opinions: To local prosecutors	Issues advisory opinions: On the interpretation of statutes	Issues advisory opinions: On the constitutionality of bills or ordinances	Reviews legislation: Prior to passage	Reviews legislation: Before signing
Alabama	A	A,D	A,D	A	*	*	*	*	*	*	...
Alaska	A(a)	A(a)	A(a)	A(a)	*	*	...	*	*	*	*
Arizona	A,B,C,D,F	B,D	B,D	B	*	*	*	*	*	*	...
Arkansas	...	D	D	...	*	*	*	*	*	*	*
California	A, E	A,D,E	A,B,D	A	*	*	*	*	*	*	*
Colorado	B,F	B	D,F(b)	B	*	*	*	*	*	*	*
Connecticut	...	...	...	...	*	*	*	*	*	*	*
Delaware	(c)	(c)	(c)	(c)	*	*	*	*	*	*	*
Florida	F	D	D	...	*	*	*	*	*	*	*
Georgia	A,B,F	A,B,D,G	A,B,D,F	B	*	*	*	*	*	*	*
Hawaii	E	A,D,G	A,D	A,G	*	*	*	*	*	*	*
Idaho	A,D,F	A	A,D	A	*	*	*	*	*	*	*
Illinois	A,D,E,F,G	A,D,E	A,D	F	*	*	*	*	*	(d)	(d)
Indiana	F(b)	...	A,D,E,F	G	*	*	*	*	*	*	*
Iowa	D,F	D	D	...	*	*	*	*	*	*	*
Kansas	B,C,D,F	D	D	A,F	*	*	*	*	*	*	*
Kentucky	A,B	B,D	b,D,F	G,	*	*	*	*	*	*	...
Louisiana	G	G	D	G	*	*	*	*	*	*	*
Maine	A	A	A	A	*	*	...	*	*	*	*
Maryland	B,C,F	B,C,D	B,C,D	B,C	*	*	*	*	*	*	*
Massachusetts	A,B,C,D,E,F,G	A,B,C,D,E,G	A,B,C,D,E	A,B,C,E	*	*	*	*	*	*	*
Michigan	A	A	D	A	*	*	*	*	*	*	*
Minnesota	B	B,D,G	A,B,D	B	*	*	*	*	*	*	(d)
Mississippi	B,E,F	...	B,F	...	*	*	*	*	*	(d)	(d)
Missouri	F	...	D	...	*	*	*	*	*	*	*
Montana	C,F	A,B,C,D	A,B,C,D,F	A,C	*	*(e)	*	*	*	*	...
Nebraska	A	A	A,D	A	*	*	*	*	*	*	...
Nevada	D,F,G(f)	D(f)	(f,g)	G,F	*	*	*	*	*	*	...
New Hampshire	A	A	A	A	*	*	...	*	*	*	*
New Jersey	A	A,B,D,G	A,D	A,B,D,G	*	*	*	*	*	*	*
New Mexico	A,B,E,F,G	B,D,G	D	B	*	*	*	*	*	*	*
New York	B,F,	B	D	B	*	*	*	*	*	*	*
North Carolina	...	D	D	...	*	*	*	*	*	*	...
North Dakota	A,G	A,D	A,D	A	*	*	*	*	*	(d)	(d)
Ohio	B,C,F	B,F	F	B,C	*	*(e)	*	*	*	*	...
Oklahoma	B,C	B,C	B,C	B,C	*	*	*	*	*	*	*
Oregon	B,F	B,D	B,D	B	*	*	*	*	*	(d)	(d)
Pennsylvania	A,D,G	D,G	D	G	*	...	*	*	*	*	*
Rhode Island	A	D	D	...	*	*	*	*	*	*	...
South Carolina	A	A,D	A,D	A	*	*	*	*	*	*	*
South Dakota	A(h)	A	A	A	*	*	*	*	*	*	*
Tennessee	D,F,G(b)	D,G(b)	D	F	*	*	*	*	*	(d)	(d)
Texas	F	...	D	...	*	*	*	*	*	*	*
Utah	A,B,D,E,F,G	E,G	D,E	E	*	*	*	*	*	(d)	(d)
Vermont	A	A	A	A	*	*	*	*	*	*	*
Virginia	B,F	A,B,D,F	B,D,F	B	*	*	*	*	*	*	*
Washington	B,D,G	B,D,G	D	L	*	*	*	*	*	*	*
West Virginia	...	...	D	...	*	*	*	*	*	(i)	(i)
Wisconsin	B,C,F	B,C,D	D	B,C(j)	*	*	*	*	*	(i)	(i)
Wyoming	B,D(b)	B,D	B,D	...	*	*	*	*	...	*	*
American Samoa	A,E	A,E	A,E	A,E	*	*	...	*	*	*	*
No. Mariana Is.	A	...	...	...	*	*	...	*	*	*	*
Puerto Rico	A,B,E	A,B,E	A,E	A,B,E	*	*	...	*	*	*	*
Virgin Islands	A	..	...	...	*	*	...	*	*	*	*

Key:
A—On own initiative.
B—On request of governor.
C—On request of legislature.
D—On request of local prosecutor.
E—When in state's interest.
F—Under certain statutes for specific crimes.
G—On authorization of court or other body.

(a) Local prosecutors serve at pleasure of attorney general.
(b) Certain statutes provide for concurrent jurisdiction with local prosecutors.
(c) No local prosecutions or prosecutors.
(d) Only when requested by governor or legislature.
(e) To legislative leadership only or to legislature as a whole.
(f) In connection with grand jury cases.
(g) Will prosecute as a matter of practice when requested.
(h) Has concurrent jurisdiction with states' attorneys.
(i) No legal authority, but sometimes informally reviews laws at request of legislature.
(j) If the governor removes the district attorney for cause.

Table 10

ATTORNEYS GENERAL: CONSUMER PROTECTION ACTIVITIES AND SUBPOENA AND ANTITRUST POWERS

State or other jurisdiction	May commence civil proceedings	May commence criminal proceedings	Represents the state before regulatory agencies	Administers consumer protection programs	Handles consumer complaints	Subpoena powers (a)	Antitrust duties
Alabama	★	★	...	...	★	•	A, B
Alaska	★	★	★	★	★	★	B, C
Arizona	★	...	...	★	★	★	A, B, D
Arkansas	★	...	★	★	★	★	B, C, D
California	★	...	...	...	★	★	B, C, D
Colorado	★	★	★	★	★	•	B, C, D(b)
Connecticut	★	...	★	★	...	•	A, B, D
Delaware	★	★	★	★	...	★	A, B, C
Florida	★	★	...	★	★	★	A, B, C, D
Georgia	★	★	★	...	...	★	B, C, D
Hawaii	★	★	★	...	...	★	A, B, C, D
Idaho	★	...	★	★	★	•	D
Illinois	★	★	★	★	★	•	A, B, D
Indiana	★	...	...	★	★	...	B, C, D
Iowa	★	★	★	★	★	•	A, B, C, D
Kansas	★	★	★	★	★	★	B, C, D
Kentucky	★	★	★	★	★	★(c)	A, B, D
Louisiana	★	...	★	...	★	★	B, C
Maine	★	★	★	★	★	•	B, C
Maryland	★	★	★	★	★	★	B, C, D
Massachusetts	★	★	★	★	★	•	A, B, C, D
Michigan	★	★	★	★	★	•	A, B, C, D
Minnesota	★	...	★	★	★	•	B, D
Mississippi	★	...	★	★	★	•	B, C
Missouri	★	...	...	...	★	•	A, B, C, D
Montana	★	★	★	...	...	★	B, C, D
Nebraska	★	...	★	★	★	•	A, B, C(d), D
Nevada	★	★	...	...	★	★	A, B, C, D
New Hampshire	★	★	★	...	★	•	B, C, D
New Jersey	★	★	★	★	★	★	A, B, C, D
New Mexico	★	★	★	★	★	•	A, C
New York	★	★	...	...	★	★	A, B, C, D
North Carolina	★	...	★	★	★	•	A, B, C, D
North Dakota	★	★	...	★	★	★	C, D
Ohio	★	★	★	★	★	★	B, C, D
Oklahoma	★	...	★(c)	★	★	•	B, D
Oregon	★	★	★(c)	★	★	•	A, B, C, D
Pennsylvania	★	...	★	★	★	•	D
Rhode Island	★	★	★	★	★	•	A, B, C, D
South Carolina	★	★	★	...	★	•	A, B, C, D
South Dakota	★	★	...	★	★	•	A, B, C, D
Tennessee	★	★	★(c)	★	★	•	A, B, C, D
Texas	★	...	★	★	★	•	B, D
Utah	★	★(d)	★(d)	...	★(f)	★	A(g), B, C, D(g)
Vermont	★	★	★	★	★	•	A, B, C, D
Virginia	★	★(e)	★	★(f)	★(f)	•	A, B, C, D
Washington	★	...	★	★	★	•	A, B, D
West Virginia	★	...	★	★	★	★	A, B, D
Wisconsin	★	...	★	★	★	•	A, B, C, D
Wyoming	★	...	...	★	★	...	...
American Samoa	★	★	★	...	...	★	...
Northern Mariana Is.	★	★	★	★	★	★	B, C, D
Puerto Rico	★	★	★	★(e)	★(e)	★	A, B, C
Virgin Islands	★	★(h)	★	...	...	★	A, B(i), C, D

Key:

A—Has parens patriae authority to commence suits on behalf of consumers in state antitrust damage actions in state courts.

B—May initiate damage actions on behalf of state in state courts.

C—May commence criminal proceedings.

D—May represent cities, counties and other governmental entities in recovering civil damages under federal or state law.

(a) In this column only: ★ indicates broad powers and • indicates limited powers.

(b) Only under Rule 23 of the Rules of Civil Procedure.

(c) When permitted to intervene.

(d) Attorney general has exclusive authority.

(e) Limited

(f) Attorney general handles legal matters only with no administrative handling of complaints.

(g) Opinion only, since there are no controlling precedents.

(h) May always prosecute in inferior courts. May prosecute in District Court by request or consent of U.S. Attorney General.

(i) May initiate damage actions on behalf of territory in District Court.

Table 11

ATTORNEYS GENERAL: DUTIES TO ADMINISTRATIVE AGENCIES AND MISCELLANEOUS DUTIES

State or other jurisdiction	Serves as counsel for state	Appears for state in criminal appeals	Duties to administrative agencies: Issues official advice	Interprets statutes or regulations	Conducts litigation: In behalf of agency	Conducts litigation: Against agency	Prepares or reviews legal documents	Represents the public before the agency	Involved in rule-making	Reviews rules for legality
Alabama	A, B, C	*(a)	*	*	*	*	*	*(b)	...	*
Alaska	A, B, C	*	*	*	*	*	*	...	*	*
Arizona	A, B, C	*(c,d)	*	*	*	*	*	...	*	*
Arkansas	A, B, C	*(a)	*	*	*	...	*	*	*	*
California	A, B, C	*(a)	*	*	*	*	*	...	...	*
Colorado	A, B, C	*(a)	*	*	*	*	*	...	*	*
Connecticut	A, B, C	...	*	*	*	...	*	...	*	*
Delaware	A, B, C	*(a)	*	*	*	*	*	*	*	*
Florida	A, B, C	*(a)	*	*	*	...	*	*	*	*
Georgia	A, B, C	*(b,c)	*	*	*	*	*	...	*	*
Hawaii	A, B	*(b,c)	*	*	*	*	*	*	*	*
Idaho	A, B, C	*(a)	*	*	*	*	*	...	*	*
Illinois	A, B*, C	*(b,c,e)	*	*	*	*	*	*	...	*
Indiana	A, B, C	*(a)	*	*	*	...	*	...	*	*
Iowa	A, B, C	*(a)	*	*	*	*	*	...	...	*
Kansas	A, B, C	*(a)	*	*	*	*	*	...	...	*
Kentucky	A, B*, C	*	*	*	*	*	*	...	*	*
Louisiana	A, B, C	*(c)	*	*	*	*	*	...	*	*
Maine	A, B, C	*(b,d)	*	*	*	...	*	...	*	*
Maryland	A, B, C	*	*	*	*	*(b)	*	*	*	*
Massachusetts	A, B, C	*(b,c,d)	*	*	*	*	*	*	*	*
Michigan	A, B, C	*(b,c,d)	*	*	*	...	*	*	*	*
Minnesota	A, B, C	*(c)	*	*	*	*	*	*	...	*
Mississippi	A, B, C	*	*	*	*	...	*	...	*	*
Missouri	A, B, C	*	*	*	*	...	*	...	*	*
Montana	A, B, C	*	*	*	*	...	*	...	*	*
Nebraska	A, B, C	*	*	*	*	*	*	...	...	*
Nevada	A, B, C	*(d)	*	*	*	...	*	*	*	*
New Hampshire	A, B, C	*(a)	*	*	*	*	*	*	*	*
New Jersey	A, B, C	*(d)	*	*	*	*	*	...	*	*
New Mexico	A, B, C	*(a)	*	*	*	*	*	*	*	*
New York	A, B, C	*(b)	*	*	*	*	*	*	...	*
North Carolina	A, B, C	*	*	*	*	*	*	*(b)	*	*
North Dakota	A, B, C	*(b)	*	*	*	...	*	...	*	*
Ohio	A, B, C	...	*	*	*	*	*	*	*	*
Oklahoma	A, B, C	*(b)	*	*	*	*	*	*	*	*
Oregon	A, B, C	*	*	*	*	...	*	...	*	*
Pennsylvania	A, B, C	*(c)	*	*	*	*	*	...	*	*
Rhode Island	A, B, C	*(e)	*	*	*	...	*	*	*	*
South Carolina	A, B, C	*(d)	*	*	*	...	*	...	*	*
South Dakota	A, B, C	*(a)	*	*	*	...	*	...	*	*
Tennessee	A, B, C	*(a)	*	*	*	...	*	*(b)	*	*
Texas	A, B, C	*(c)	*	*	*	*	*	...	*	*
Utah	A, B, C	*(a)	*	*	*	*	*	*	*	*
Vermont	A, B, C	*(b)	*	*	*	*	*	*(b)	...	*
Virginia	A, B, C	*(a)	*	*	*	*	*	*	*	*
Washington	A, B, C	*(c,f)	*	*	*	*	*	*	*	*
West Virginia	A, B, C	*(a)	*	*	*	*(f)	*	*	*	*
Wisconsin	A, B, C	*(b)	*	*	*	*	*	*(b)	*	*
Wyoming	A, B, C	*(a)	*	*	*	...	*	...	*	*
American Samoa	A, B, C	*(a)	*	*	*	...	*	...	*	*
Northern Mariana Is.	A, B, C	*(g)	*	*	*	...	*	...	*	*
Puerto Rico	A, B, C	*	*	*	*	...	*	...	*	*
Virgin Islands	A, B, C(h)	*	*	*	*	...	*	...	*	*

Key: A—Defend state law when challenged on federal constitutional grounds.
B—Conduct litigation on behalf of state in federal and other states' courts.
C—Prosecute actions against another state in U.S. Supreme Court.
*Only in federal courts.
(a) Attorney general has exclusive jurisdiction.
(b) In certain cases only.
(c) When assisting the local prosecutor in the appeal.
(d) Can appear on own discretion.
(e) In certain courts only.
(f) If authorized by the governor.
(g) Because there are no local prosecutors.
(h) Except in cases in which the U.S. Attorney is representing the Government of the Virgin Islands.

Elected Attorney General: Will of the People

The framers of the State Constitution, we believe, were wise to provide for a strong chief executive but we believe they were not wise in making the state attorney general appointive, rather than elective. Down through the years, it appears to us, that the various attorneys general, by and large, have not acted primarily in accordance with the will of the people, but the will of their bosses, the governors. All too often they have slanted their legal opinions, which are binding unless overturned by the courts, to further the political aims of their bosses, the governors. And in so doing, we believe they have often allowed the governors to take illegal and unconstitutional steps. At the same time all too often an attorney general has slated a legal opinion against the will of the majority, simply because his boss, the governor, is opposed to it.

This has resulted in a situation where the governor has become not just powerful, but almost omnipotent. Not only is he able to use the State Department of Law to further his policies and programs, however meritorious, but to block policies and programs with which he does not agree. The governor is powerful enough without making him overpowering. After more than two decades of statehood, it is apparent to us that the attorney general needs to be responsible to the people.

Some Alaskans — as the Anchorage Daily News has argued editorially — will contend that a switch to an elected attorney general will dilute accountability.

Said the News:

"The governor of Alaska is empowered by the constitution with strong executive authorities; that makes him the boss, accountable to the people and able to choose his own team in doing what he believes needs done. An elected AG obviously would have his own, possible separate agenda, and teamwork between that office and the governorship might fall apart. Both the governor and the AG could justify inaction by a merry-go-round finger pointing and accusation, and citizens would never know who to look to for responsibility."

The trouble with the latter argument is that it has been rejected by 43 of the 50 states as without merit: they have elected attorneys general because they believe the governor should have to comply with the law as all citizens, should not be above the law or be able to bend the law in carrying out his policies and programs. While there have been conflicts between governors and elected attorneys general, these have been considered justifiable and accepted by the people as a small price to pay for avoiding possible political maneuvering of appointed attorneys general.

Alaska's present governor opposes the change to an elected attorney general. He says if an elected attorney general's view are at odds with the governor's, he could seriously threaten or even thwart the governor's programs. And, of course, the reverse is true of an appointed attorney general.

Attorney General Norm Gorsuch is opposed to an elected attorney general saying such would undermine accountability and an attorney general running for office and collecting campaign funds would open the way to conflicts of interest. Yet Gorsuch, an appointed attorney general, is under fire now for accompanying Governor Sheffield on a fundraising trip in the lower states in January.

Rep. Rick Uehling (R-Anchorage) has sponsored a joint resolution to ask voters to amend the Alaska Constitution to require would-be attorneys general to run for office on non-partisan primary and general-election ballots. Uehling contends electing the attorney general would provide greater autonomy, freedom from political manipulation, and greater personal responsibility for the attorney general.

In a number of cases attorneys general have approved the wording on ballot propositions. After the voters have expressed their wishes on such ballot measures contrary to the wishes of the governor, they have been challenged as illegal or unconstitutional and thrown out. Examples are the call for a constitutional convention, the Beirne homestead initiative, and the recent Tundra Rebellion ballot proposition. On two big issues which faced the state, residency and local hire, state attorneys general have been dead wrong. Their cases have been overturned by the U.S. Supreme Court. Attorneys general have approved such horrible state contracts as the ill-fated Alpetco contract. And the list goes on and on.

But most disturbing regarding our appointive attorney general is a paragraph in a speech which Governor Sheffield gave to the State boards of Fish and Game recently in regard to their mission on the controversial subsistence issue.

Said the governor: "Your actions will be guided by the policies set by my office. You will be aided in that by the Attorney General's office, which will identify the legal avenues available for furthering those policies. The Attorney General's Office also will outline the scope of your authority, and will alert you if you are exceeding it. The opinions of the Attorney General are binding on all State agencies; actions which run counter to those opinions will not be defended by the State, and may expose you to personal liability." From this it appears that the power and influence of the attorney general, in much greater degree than previously, now extends not just to the Department of Law but to every nook and cranny of state government.

The Fish and Game Boards have been struggling with the subsistence issue since 1978. The problem has not been in the regulations but in the law which is claimed by many to be unconstitutional. There is little likelihood that the new boards are going to be able to achieve what the old Fish and Game boards were unable to do. The new boards may put a bandaid on the issue but it won't be solved until the problem of the law itself is properly addressed. The governor apparently doesn't want to look at the law and the attorney general, therefore, won't look at it. And the attorney general appears to be a tool of the governor in stifling dissent. This was also illustrated this week in the Supreme Court decision in the Joe Vogler case. The high court ruled, contrary to the argument by the attorney general, that there was no compelling state interest in favoring the two major political parties by putting unreasonable restrictions on small, upcoming political parties.

Yes, the time is long passed when Alaska can afford to continue with appointed attorneys general misused by our governors. It's time for Alaska to join the 44 other states in insisting that our attorney general answer primarily to the people, not the governor.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Weak arguments

RIGHT OFF THE MAT, there was a loud objection to the Anchorage Crime Commission's proposal that Alaska's attorney general and the local prosecuting attorneys should be elected. The complaints came from the appointed attorney general and one of his appointed district attorneys.

The flaws they see in the proposal are worthy of public review.

For one thing, they said, electing such officials would bring the justice system into politics. They would become subject to pressure from members of the public with axes to grind.

For another, they argue, lawyers would run for attorney general and district attorney in hopes of using the positions as stepping stones to higher political office.

BUT THOSE aren't necessarily flaws. On the contrary, it's possible to argue that those prospects would offer an enormous improvement in the way things are done in Alaska.

Take the second objection first. Under the Alaska constitution, only two state government officials are elected statewide — the governor and the lieutenant governor. Everybody else in the system, including the judges, is appointed by the governor or by department heads appointed by him.

The only other elected officials in Alaska are the city or borough mayors, elected locally; 60 members of the legislature, elected in local districts, and the three members of the state's congressional delegation, elected statewide. Not much of a stepladder on which people interested in public service can climb toward higher office.

An elected attorney general naturally would be looked upon as a potential candidate for governor or U.S. senator or congressman. What's wrong with that? It might be a powerful incentive for the one occupying that spot to do an outstanding job.

AS TO THE COMPLAINT that an elected attorney general might be subject to public pressure, again the advantages are compelling.

Why shouldn't the attorney general have to dance on a hot public griddle if the people become alarmed over deficiencies in the administration of justice?

The system as it now exists makes the attorney general the personal lawyer of the governor, his political defender and his legal arm in waging political warfare against the legislature and the public.

So long as he remains protected by the governor's skirts, the attorney general is immune from public pressure. All kinds of policies can be legitimatized, even though they might infuriate wide segments of the public and frustrate the aspirations of the people.

Legal opinions issued by the attorney general bind state agencies. They can be tools of the governor to guide, maneuver, control and stop all kinds of enterprises — economic and otherwise.

An attorney general answering to the public through the political process would have the freedom to respond to public concerns in ways that are not possible now.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

DREX HEIKES
Managing Editor

Page A-10 Thursday, July 2, 1981

Memo to politicians

STATE OFFICIALS who depend on votes of Alaskans for their public offices would be wise to arrange for the attorney general to be elected. A statewide poll by Dittman shows that public support is overwhelming.

In response to the simple question "Should the attorney general be elected?" 61 percent responded affirmatively and 27 percent preferred appointment.

That was the quick reaction from Alaskans scattered far and wide. The idea of electing that important official was favored by 73 percent of those in rural areas, 63 percent in Central Alaska (Fairbanks), 56 percent in Southcentral, 67 percent in Anchorage.

Only in Southeast Alaska was the response different. There it was 41 percent for appointment and 42 percent for election.

A SECOND QUESTION put to the same respondents built up still more the case in favor of the elective process.

It cited some of the powers that go with the office of attorney general. Upon hearing them, the respondents were 71 percent for and only 21 percent against.

That question put it this way: "If you knew that the attorney general of Alaska, who is appointed, also appoints all state prosecutors and district attorneys throughout the state, would you support having the attorney general remain an appointed position or would you support the attorney general becoming an elected position?"

Those favoring election gained 10 points while those for appointment lost 6 points.

TWO MESSAGES are handed to the politicians in that poll. The first is that a substantial majority of Alaskans want their attorney general elected, not appointed. The second is that the proposal gains strength when Alaskans are reminded of the power that lies in the office.

A politician can readily see the significance. He is disappointing his constituents if he ignores the proposal and he may discover his reelection in jeopardy if the day comes when a candidate campaigns against him on that issue.

In rural areas the final lineup was 85 percent for election. In Central Alaska 75 percent. In Southcentral 71 percent and in Anchorage 74 percent. Even in Southeast Alaska many voters changed their minds on the second question. The final tally there was 54 percent for election and only 34 percent for appointment.

The Anchorage Times

Editorial

The better way

AN ELECTED attorney general is in the public interest and a resolution to that effect now making its way through the legislative process should be approved.

The person who holds this important office in state government should be responsible to the people.

At it now stands, the attorney general is appointed by the governor, is a member of the governor's household and the opinions he hands down are reflections of the governor's point of view, not the people's.

THE RECORD SHOWS that attorneys general in the past few years have nearly always fallen in line with the governor's whims. It is a cozy arrangement.

The present governor doesn't want the change. That is understandable. He has said he opposes the idea of an elective attorney general because "if his own views are at cross-winds with the governor's, he could seriously threaten or even thwart the governor's programs."

And the man who currently sits in the attorney general's chair says he doesn't want to alter the system. He says it would diffuse the executive branch's accountability to the public. He also says he thinks that having to run for office would involve collecting campaign funds, opening the way to conflicts of interest.

NEITHER objection overrides the argument that the attorney general should be responsible to the people and not to the governor.

Nor do they address the fact that an elected attorney general can do a lot more toward keeping members of the administration honest.

Forty-three of the 50 states have an elected attorney general. Alaska should become the 44th.

Elected Attorney General; Will of the People

The framers of the State Constitution, we believe, were wise to provide for a strong chief executive but we believe they were not wise in making the state attorney general appointive, rather than elective. Down through the years, it appears to us, that the various attorneys general, by and large, have not acted primarily in accordance with the will of the people, but the will of their bosses, the governors. All too often they have slanted their legal opinions, which are binding unless overturned by the courts, to further the political aims of their bosses, the governors. And in so doing, we believe they have often allowed the governors to take illegal and unconstitutional steps. At the same time all too often an attorney general has slated a legal opinion against the will of the majority, simply because his boss, the governor, is opposed to it.

This has resulted in a situation where the governor has become not just powerful, but almost omnipotent. Not only is he able to use the State Department of Law to further his policies and programs, however meritorious, but to block policies and programs with which he does not agree. The governor is powerful enough without making him overpowering. After more than two decades of statehood, it is apparent to us that the attorney general needs to be responsible to the people.

Some Alaskans — as the Anchorage Daily News has argued editorially — will contend that a switch to an elected attorney general will dilute accountability.

Said the News:

"The governor of Alaska is empowered by the constitution with strong executive authorities; that makes him the boss, accountable to the people and able to choose his own team in doing what he believes needs done. An elected AG obviously would have his own, possible separate agenda, and teamwork between that office and the governorship might fall apart. Both the governor and the AG could justify inaction by a merry-go-round finger pointing and accusation, and citizens would never know who to look to for responsibility."

The trouble with the latter argument is that it has been rejected by 43 of the 50 states as without merit: they have elected attorneys general because they believe the governor should have to comply with the law as all citizens, should not be above the law or be able to bend the law in carrying out his policies and programs. While there have been conflicts between governors and elected attorneys general, these have been considered justifiable and accepted by the people as a small price to pay for avoiding possible political maneuvering of appointed attorneys general.

Alaska's present governor opposes the change to an elected attorney general. He says if an elected attorney general's view are at odds with the governor's, he could seriously threaten or even thwart the governor's programs. And, of course, the reverse is true of an appointed attorney general.

Attorney General Norm Gorsuch is opposed to an elected attorney general saying such would undermine accountability and an attorney general running for office and collecting campaign funds would open the way to conflicts of interest. Yet Gorsuch, an appointed attorney general, is under fire now for accompanying Governor Sheffield on a fundraising trip in the lower states in January.

Rep. Rick Uehling (R-Anchorage) has sponsored a joint resolution to ask voters to amend the Alaska Constitution to require would-be attorneys general to run for office on non-partisan primary and general-election ballots.

Uehling contends electing the attorney general would provide greater autonomy, freedom from political manipulation, and greater personal responsibility for the attorney general.

In a number of cases attorneys general have approved the wording on ballot propositions. After the voters have expressed their wishes on such ballot measures contrary to the wishes of the governor, they have been challenged as illegal or unconstitutional and thrown out. Examples are the call for a constitutional convention, the Beirne homestead initiative, and the recent Tundra Rebellion ballot proposition. On two big issues which faced the state, residency and local hire, state attorneys general have been dead wrong. Their cases have been overturned by the U.S. Supreme Court. Attorneys general have approved such horrible state contracts as the ill-fated Alpetco contract. And the list goes on and on.

But most disturbing regarding our appointive attorney general is a paragraph in a speech which Governor Sheffield gave to the State boards of Fish and Game recently in regard to their mission on the controversial subsistence issue.

Said the governor: "Your actions will be guided by the policies set by my office. You will be aided in that by the Attorney General's office, which will identify the legal avenues available for furthering those policies. The Attorney General's Office also will outline the scope of your authority, and will alert you if you are exceeding it. The opinions of the Attorney General are binding on all State agencies; actions which run counter to those opinions will not be defended by the State, and may expose you to personal liability." From this it appears that the power and influence of the attorney general, in much greater degree than previously, now extends not just to the Department of Law but to every nook and cranny of state government.

The Fish and Game Boards have been struggling with the subsistence issue since 1978. The problem has not been in the regulations but in the law which is claimed by many to be unconstitutional. There is little likelihood that the new boards are going to be able to achieve what the old Fish and Game boards were unable to do. The new boards may put a bandaid on the issue but it won't be solved until the problem of the law itself is properly addressed. The governor apparently doesn't want to look at the law and the attorney general, therefore, won't look at it. And the attorney general appears to be a tool of the governor in stifling dissent. This was also illustrated this week in the Supreme Court decision in the Joe Vogler case. The high court ruled, contrary to the argument by the attorney general, that there was no compelling state interest in favoring the two major political parties by putting unreasonable restrictions on small, upcoming political parties.

Yes, the time is long passed when Alaska can afford to continue with appointed attorneys general misused by our governors. It's time for Alaska to join the 44 other states in insisting that our attorney general answer primarily to the people, not the governor.

Opinion

Rich

Way
Gen

Attorney general election needed

The recent proposals to provide for the election of Alaska's attorney general have drawn praise, curiosity and criticism from voters and politicians.

The post is currently filled by an appointee of the governor. The proposed change in state law would have the attorney general stand for election every four years.

The election proposal seems a worthy one.

Currently the system of appointment is good for the governor and his administration. Governors may appoint people who may share similar political philosophies and views of the state constitition. It is not surprising that many in the Sheffield administration feel the current system is the best one. For their needs, it is.

But does an appointed attorney general best serve the people of the state? Without implying criticism of Attorney General Norman Gorsuch, the answer is no.

An elected attorney general would be more accountable to the people. Like the governor, lieutenant governor and legislators, he should be held to answer to the voters of Alaska. The process of accountability is now shielded by the governor's office.

There are arguments against the plan which claim an election would throw the enforcement of Alaska's laws into the political arena. The attorney general is already a political appointment, a status that leaves it deep in political muck to begin with. Law enforcement, be it in the form of maintaining simple fishing regulations or investigating public officials and white collar crime, already has its political aspect.

That aspect is not likely to change with the election of the attorney general. The actions of the person holding the office would, however, be held up to greater public scrutiny than under the present system of appointment.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

30

Another good reason

ONE WAY for Alaska to avoid having legislative lawyers sue administration lawyers is to elect an attorney general who is beholden to neither.

Add that to a long list of reasons to make the attorney general one of the very limited number of elected officials in the State of Alaska. As a matter of fact, there are only two — the governor and the lieutenant governor. Commissioners who head the various administrative departments are appointed by the governor.

This extremely restricted opportunity for the people to elect the public officials who presumably serve them is a unique provision of the Alaska Constitution. It was deliberately adopted, for the reason that those who were here at the time the new state was created wanted a powerful chief executive.

They wanted leadership and accountability. When it came to steering this new ship of state, those Alaskans back in the middle '50s wanted a single captain on the bridge.

IT WAS a good idea. There was need for a powerful hand at the helm of a state with little income, a small population and a million needs. The governor had marching orders to assemble a team and get the show on the road — with the concurrence, of course, of the legislative branch.

It had a fine beginning. For the most part, the executive and legislative branches worked in concert toward a common goal during years of economic struggle.

But not even the visionary constitutional delegates, and the voters who applauded their work in those dimming last days of the territory, could have perceived the day when Alaska would be rolling in money and a single field could produce a trillion dollars worth of oil.

The coming of that wealth produced a Mount St. Helens eruption in the Juneau bureaucracy. Not only did executive agencies swell in size and number, the legislature ballooned as well. It added offices and staffs and interim agencies and even went so far as to hire its own legal counsel, separate from the attorney general's office.

OVER THE YEARS, the attorney general became more the lawyer of the governor than of the state government as a whole. That produced an adversary situation with the legislators who often wanted a different legal opinion than they could expect from the Department of Law.

Their answer was to hire lawyers who would provide opinions supporting the legislature's interests. The result is that public funds are used to finance one set of state lawyers doing battle with another set.

An independent attorney general's office, headed by an elected chief not beholden either to the governor or the legislature, could provide both with unbiased and unfettered legal guidance. The people, as well as state officials, would be better served.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Page A-10 Sunday, March 29, 1981

Let the voters decide

IN FORTY of the 50 states, the attorney general is elected to his post.

It is a system that obviously works well, because the people are the ones who decide who should fill this high office. And an attorney general answerable to the people is one who is responsive and responsible.

It's strange, therefore, to see the burning vigor that marks the opposition to letting the people of Alaska choose their attorney general. Yet there are those who apparently fear the people.

For example:

"I can think of no single change that would be more damaging, more harmful, more dangerous to the character of government."

THAT'S THE astonishing view of Superior Court Judge Thomas Stewart of Juneau, who testified the other day before a legislative hearing on a proposed constitutional amendment that would require the election of Alaska's attorney general, who is now an appointee of the governor and answerable only to him.

More damaging? More harmful? More dangerous?

How can this be? What is being proposed is part and parcel of the democratic form of government in which the people have the right to elect their leaders. Are elections damaging, harmful and dangerous to the character of our government?

We confess to lacking the judicial wisdom that graces members of Alaska's Superior Court. But all along we thought the character of our government was rooted in the elective process.

There are many Alaskans — and we're among them — who believe the present system of having the attorney general appointed, rather than elected, has proved less than satisfactory.

We don't buy the argument of former Attorney General Norm Gorsuch that "legal competence and electablity are not necessarily equal." The statement is incomplete. The rest of it is that "legal competence and appointability are not necessarily equal, either."

IT'S QUITE POSSIBLE that an incompetent lawyer might be elected attorney general. But his shortcomings would be readily evident and it's a sure thing that he would serve only a single term.

It's also quite possible — in fact, very likely — that some extremely capable men and women would seek election to the office, were it up to the people to decide. An elected attorney general would be his or her own person, with his or her reputation on the line. And he or she would be no lackey to any governor, or any legislature.

There's no doubt that were the office an elected position, it would be used by many as a stepping stone to higher office — the governorship, for example, or a seat in the U.S. House or U.S. Senate. But what's wrong with that?

Rep. Fred Brown, the Fairbanks Democrat who heads the House Judiciary Committee sponsoring this constitutional change, sees this as a means of strengthening government. So do we. And we hope he prevails so that this matter can be brought to the ballot for a vote of the people.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

110

The better way

IT'S TOO BAD that former Attorney General Avrum Gross doesn't think it's a good idea for Alaskans to elect their attorney general. But just because he feels that way detracts not one iota from the merit of the proposal.

It would be astonishing were Mr. Gross, who now teaches a couple of courses at Stanford University law school, to come out for an elected attorney general. His public career has been as an appointed legal spokesman for Gov. Jay Hammond.

Fortunately, there are other legal experts — whose qualifications and public service careers are are least as good as those of Mr. Gross — who feel precisely the opposite. They offered testimony contrary to that of Mr. Gross by satellite communication facilities in a hearing last week before the House Judiciary Committee.

The attorneys general of Pennsylvania and Colorado and the assistant attorney general of California told the committee that an elected attorney general is more independent of the governor and administration, and thus less vulnerable to political repercussions from decisions.

FORTY of the nation's 50 states elect their attorney general. Alaska is one of only five states where the office is filled by appointment of the governor. In the other five the selection is made in a variety of ways, including legislative appointment.

Mr. Gross, however, thinks the Alaska way is best. Were it otherwise, he contended, the governor would attempt to shift blame for administration failures to the attorney general rather than have a clear responsibility himself.

That's a pretty feeble defense of the present system.

If anything goes wrong in the administration of any program, regardless of the attorney general, any governor is going to be politically adept enough to dance out of the line of responsibility.

THE ATTORNEY general of Pennsylvania told members of the Judiciary Committee that Pennsylvanians voted overwhelmingly in favor of a constitutional amendment to make the office elective because they felt the attorney general was "not responsive to public needs" and that there was a "cozy arrangement" between the attorney general and the governor.

Colorado's attorney general said an elected attorney general carries "at least the aura of having an independent political base" and can say no to the governor "when the governor ought to be said 'no' to."

An assistant California attorney general said an elective attorney general is more efficient than an appointive one and "is not necessarily a threat to the functioning of the governor."

Those comments make sense for Alaska. And the legislature should take steps to bring this constitutional change to the ballot.

There seems little doubt that the amendment would be approved, if the legislature would only give the people a chance to vote.

7381

No matter how you cut it

THE UNIVERSAL preference of the majority of Alaskans for electing the state's attorney general was pointed up in many different ways in a Dittman poll that showed 71 percent in support and only 21 percent opposed.

Dittman reported that the election proposal has overwhelming support in almost every bracket of the population, be it based on age, sex, income, educational attainment, party registration.

AMONG ALASKANS who have registered as Democrats or Republicans, 72 and 73 percent, respectively, favor election. Non-partisans were 69 percent in favor. Alaskans aged 18 to 24 are 77 percent in favor, those 56 and over, 75 percent and those in between range from 68 to 72 percent.

The poll showed 76 percent of the women and 66 percent of the men favor election. Homemakers are 75 percent for it. Private and public sector employees as a whole favor it 71 to 74 percent. Among state employees, however, the idea is not so popular. Yet more than half (56 percent) are for it.

Support of the election proposal declines as family incomes increase but the majority in all categories favor it. In low income groups 77 percent favor it while in higher income households 67 percent do.

Curiously, the idea of electing the attorney general is more popular among those who don't bother to register, and hence probably don't vote, than among those who do. Those not registered showed 73 percent for election while registered voters were 71 percent favorable.

THE RESULTS of that Dittman survey will be engraved on the minds of those who plan political campaigns. And Dittman's final analysis might inspire some of them to get on the bandwagon to amend the constitution so as to give the people the elective power they want.

That analysis was, "Presenting information regarding the attorney general's powers and responsibilities causes a strong shift to the elected option — especially among the 'undecided' respondents. In total, the undecided percentage declines from 12 to 7½ and more than 5 percent of those who favored the current appointed status changed their minds to support the elected provision when it was learned that the attorney general has broad appointive powers of his own."

Proceedings of Neb. Const. Convention (1920)
Pages containing discussion on whether office of Attorney General should be elective or appointive

939
1324
1325
1332
1334
1339
1345
1346
1351
1355
1358
1362

COMMON LAW POWERS OF THE ATTORNEY GENERAL

Background paper

ARTHUR J. SILLS
ATTORNEY GENERAL OF NEW JERSEY
PORTLAND, OREGON
AUGUST 30, 1967

INTRODUCTION

The common law powers of the Attorney General reflect the development of power of the English monarchy with its origins traceable to the Middle Ages. Through the years, the office along with its common law incidents, has undergone a transformation. Where once the Attorney General stood as the private representative of the Crown, today he stands as the prime advocate for the public interest. With his common law powers enlarged upon by statutory enactment and judicial interpretation, the Attorney General occupies a unique position within the legal framework, one which is far more complex and pervasive than that occupied by his common law predecessor.

I. THE COMMON LAW HERITAGE

During the Thirteenth Century "attornati regis", "narratores pro rege", and "qui sequuntur pro rege", and the King's serjeants appeared as counsel for the King in the royal courts. Their duty was to [redacted] These offices gradually took on definition during the Fourteenth Century. The powers of each attorney were limited with respect to scope of legal competency, the courts in which he could practice, and the geographical area

in which he could represent the Crown. By 1399, a single King's attorney was appointed, empowered to represent the Sovereign in all courts and thus unifying the functions previously performed by several attorneys. In the letter patent appointing him in 1461, the King's attorney was first described as the Attorney General of England. However, it was not until the beginning of the Sixteenth Century that the office of Attorney General began to assume the degree of influence and prestige that it has continued to maintain. And not until the early Seventeenth Century did the Attorney General replace the King's serjeants as the most important legal officers of the realm.[1]

Holdsworth has explained the early common law development of the office of the Attorney General as a manifestation of the development of the royal prerogatives. He observed:

> "[W]e must always remember that 'the King is prerogative'; but that in the Middle Ages the King's position and rights differed originally rather in degree than in kind from those of other men. The position of the King's officers, and the rules applicable to them, will be analogous to the position of and rules applicable to similar officers employed by other men, at the time when these officials and these rules first originated. But there will be a difference, for 'prerogative means exceptionality' . . . . The maintenance of old ideas, and the development, under the pressure of national necessities, of the differences between the rules applicable to the King's case and those applicable to the case of the ordinary man, will produce a type of official and a body of law applicable to them, quite unlike anything else . . . ."[2]

Unlike the attorneys of ordinary citizens, the Attorney General could appear in any court and in any case where his Sovereign's interests were at issue. Theoretically, the King was always present in the royal courts. Hence, the Attorney General did not "represent" his Sovereign, but assured that the King's prerogative rights were not compromised.[3]

During the Tudor and Stuart monarchies, the office of Attorney General assumed added prestige and definition as it became an effective royal instrument for quelling civil disturbances, quashing seditious plots, and combatting the increasingly self-assertive common law courts. At issue was the Sovereign's control over international, civil and religious controversies, and his position as the "fountain of justice" of the realm. The Tudor monarchs relied upon the law to justify their own position and power.[4] In the contest between monarchs and the common law courts, helped [illegible] the scope of royal prerogatives [illegible] defined the extent of the powers of the Attorney General [illegible] royal [illegible]

With the advent of the Eighteenth Century, the Attorney General's functions became political as well as legal. By 1700, as the chief law officer of the state, he was accorded membership in the House of Commons and was called upon to explain the legislation put before the House by the Crown.[5]

As the guardian of royal prerogative, the Attorney General of England possessed a broad range of powers. Blackstone has enumerated many of them:

(1) The Attorney General could prosecute all actions necessary to protect the real property of the Crown. Theoretically, by virtue of his "legal ubiquity", the King could not be dispossessed of his property. But the Attorney General could bring an action of quare impedit, which--unlike ejectment--assumed that the complaining party was in possession of the property in question.

(2) The Attorney General could also proceed by inquisition or inquest of office to investigate land or chattel that should be held by the King by virtue of escheat, forfeiture, wardship, relief and other feudal incidents.

(3) The Attorney General could proceed by a writ of scire facias to repeal a royal grant or patent.

(4) The Attorney General could recover for damages done to royal property by bringing an information in the court of exchequer. Information in rem was available where the Crown sought to possess unclaimed property such as treasure-trove and wrecks.

(5) He could proceed by writ of quo warranto to examine the basis of an individual's claim to an office, franchise or privilage

(6) The writ of mandamus was available to him to compel admission or readmission of a properly appointed official to his office.

(7) As parens patriae, the King was responsible for the proper maintenance of public charities and trusts. Hence, the Attorney General was empowered to file an information--at the relation of an informant--to have abuses examined and corrected.[6]

(8) As for criminal proceedings, the Attorney General could proceed by information, without prior indictment by a grand jury. Furthermore, informations could be brought solely at the Crown's initiative or at the relation of an informant (but still in the name of the King). Blackstone shed the following light on this procedure:

> "The objects of the King's own prosecutions filed ex officio by his own Attorney-General, are properly such enormous misdemeanors as peculiarly tend to disturb or endanger his government or to molest or affront him in the regular discharge of his royal functions. For offenses so high and dangerous, in the punishment or prevention of which a moment's delay would be fatal, the law has given to the Crown the power of an immediate prosecution . . . . The objects of the other species of informations, filed by the master of the crown office upon the complaint or relation of a private subject, are any gross and notorious misdemeanors, riots, batteries, libels, and other immoralities of an atrocious kind, (a) not peculiarly tending to disturb the government, (for those are left to the care of the Attorney General) . . . ."[7]

However, the proceeding by information was confined to misdemeanors only. When a capital offense was involved, a grand jury indictment was required. In addition, the Attorney General conducted important state trials and the investigations in preparation for them.[8]

At common law, then, the function of the Attorney General was to safeguard the powers and privileges of the monarch. This role is made particularly clear by Blackstone's discussion of criminal proceedings brought by information: The Attorney General initiates proceedings only for misdemeanors which particularly disturb the King or his government. Similarly, in civil suits, the Attorney General's duty was to protect royal property and revenue. Indeed, Attorney General Cake's interpretive behavior at the treason trials of Raleigh and Essex can best be explained by his passionate belief in the supremacy of the monarchy and a profound sense of the Attorney General's role as the guardian of the Queen and her prerogative.[9]

II. THE MODERN CONTENT

In the United States many jurisdictions have held that the State Attorney General possesses those powers attributed to him at common law. There does not, however, appear to be a uniform approach in holding that a State Attorney General may exercise his common law powers.

In some states, the constitution establishes the office and declares that its duties shall be such as prescribed by law. These states may be subdivided into three categories: (1) those interpreting "as prescribed by law" to refer to the common law as restricted and supplemented by statutory law, e.g., Kentucky[10]; (2) those interpreting "as prescribed by law" to mean that the Legislature may supplement,

but not restrict the Attorney General's common law powers and duties, e.g., Illinois[11]; (3) those interpreting "as prescribed by law" to preclude the existence of the Attorney General's common law powers, e.g., Wisconsin[12]. In other states, like Massachusetts[13], the constitution establishes the office and does not specify the nature of the powers and duties of the Attorney General. Of these states, som such as Pennsylvania[14], recognize the Attorney General's common law powers, while others like New Mexico[15], do not. Finally, two states, Indiana[16] and Oregon[17], have no constitutional provision for the Attorney General and only one of them, Oregon, recognizes the common law powers.[18]

With the recognition in most jurisdictions that the State Attorney General fell heir to the powers exercisable by his common law predecessor, it was equally clear that, unlike England, there was no monarch in whom the governmental prerogatives were vested. Since the power of government resided in the people, the courts reasoned that the governmental prerogatives had to be exercised on their behalf.[19] Just as the Attorney General safeguarded the royal prerogatives at common law, similarly, the official authority and obligation to protect public rights and enforce public duties was reposed in him in the states.[20]

The courts, in any number of situations, have expressly approved of an Attorney General's exercise of his common law power. For example, the following instances may be cited: (1) recover damages for sand and gravel taken from tidewater land;[21] (2) abate public nuisances through an equitable action;[22] (3) intervene in a suit concerning a contested will, where the state has a possible escheat interest;[23] (4) challenge the reduction of a state tax assessment;[24] (5) institute actions to collect unpaid franchise taxes and premiums for a state workman's compensation fund;[25] (6) seek removal of public officials for misconduct in office;[26] (7) proceed in equity to cancel the fraudulent registration of voters;[27] (8) enforce the restrictive provisions of a deed from the state;[28] (9) enforce public and charitable trusts;[29] (10) bring suit to cancel a fraudulently procured United States patent for either land or an invention;[30] (11) intervene when the constitutionality of a state statute is attacked;[31] (12) challenge the constitutionality of a state statute;[32] (13) investigate criminal activities, appear before a grand jury, institute criminal proceedings, and nolle pros a criminal action;[33] (14) supersede the district attorney in a criminal prosecution;[34] (15) and make any bona fide disposition of these actions that in his judgment would be in the best interests of the state.[35]

While most of these powers can be directly related to those enumerated by Blackstone, they now promote interests that are more varied and extensive than those furthered by the Attorney General at common law. The function of the Attorney General of the Seventeenth and Eighteenth Centuries was to protect and promote the royal prerogative. By assuming that this prerogative power is now vested in the people, the courts have concluded that the common law powers accrue to the contemporary Attorney General, as the guardian of the public interest.[36]

FOOTNOTES

1. Edwards, The Law Officer of the Crown, pp. 12-53; 6 Holdsworth, A History of English Law, pp. 457-472; Plucknett, A Concise History of the Common Law, 4th Ed., pp. 216-220.

2. 6 Holdsworth, A History of English Law, pp. 466-467.

3. Ibid, pp. 467-468; Bowen, The Lion and the Throne; DeLong, "The State Attorney General", 25 Journal of Criminal Law and Criminology 358, 361-365.

4. Bowen, The Lion and the Throne, pp. 125-224. 6 Holdsworth, A History of English Law, pp. 466-468; Plucknett, A Concise History of the Common Law, 4th Ed. pp. 217.

5. Edwards, The Law Officer of the Crown, pp. 32-53.

6. 3 Blackstone, Commentaries, pp. 257-264, 427.

7. 4 Ibid., pp. 308-309.

8. 4 Ibid., pp. 308-310; DeLong, "The State Attorney General" 25 Journal of Criminal Law and Criminology, 358, 361-365; Devlin, The Criminal Prosecution in England, p. 20.

9. Bowen, The Lion and the Throne, pp. 125-224.

10. The Authority of the Attorney General of Kentucky has been founded on provisions in each of the State's Constitutions. See: Ky. Const., Art. II, § 16 (1792); Ky. Const., Art. III, § 23 (1799); Ky. Const., Art. III, § 25 (1850); and Ky. Const., §§ 87, 91 and 217 (1891). The provisions of the present constitution are supplemented by statutes which provide that the Attorney General as chief law officer of the state and "all of its Departments, Commissions, Agencies . . . shall exercise all common law duties and authority pertaining to the Office of Attorney General under the common law, except when modified by statutory enactment". KRS 15.020. This provision has been interpreted in Aetna Ins. Co. v. Commonwealth, 106 Ky. 864, 51 S.W. 624 (1899) and Johnson v. Commonwealth, 291 Ky. 829, 165 S.W. 2d 820, 829 (1942). For analysis of the Kentucky Attorney General's criminal law responsibilities, see Ops. Ky. Attorney General 60-169 (1960); 51 Ky. 104-S-111-50. For analyses of the Office's civil law responsibilities, consult 51 Ky. Law Journal 66-S-76-S and Montague, "The Office of the Attorney General in Kentucky", 49 Ky. Law Journal 194, 199.

11. The Office of Attorney General in Illinois is provided for in the State Constitution. Ill. Const., Art. V, § 1 which stipulates that the Attorney General "shall perform such duties as prescribed by law". The courts have interpreted this to mean both the common law and statutory law but have held that the Legislature and the courts are powerless to restrict the common law responsibilities which are inherent in the office. See: People v. Finnegan, 373 Ill. 387, 38 N.E. 2d 715, 717 (1941); accord, People v. Covelli, 415 Ill. 79, 112 N.E. 2d 156 (1953); People v. Danick, 8 Ill. 2d 43, 132 N.E. 2d 507 (1956); Ferens v. Russel, 270 Ill. 304, 110 N.E. 130 (1915); Hunt v. Chicago and Dummy Railroad, 121 Ill. 638, 13 N.E. 176 (1887). Many of the common law powers of the attorney general of Illinois have been enumerated. Ill. Statutes S.H.A. Ch. 14, § 4. Cf. Barrett, "The Powers and Duties of the Attorney General of Illinois as The Law Enforcement Officer of the State", 7 John Marshall L.Q. 520 (1942). For cases in which the courts have relied solely on the common law to sustain particular powers see: People v. Daniels, 8 Ill. 2d 43, 132 N.E. 2d 507 (1956)--nolle pros and Saxly v. Sonneman, 318 Ill. 600, 149 N.E. 526 (1925)--the appointment of deputies.

12. The Wisconsin Constitution stipulates that the powers and duties of the Attorney General shall be "prescribed by law". Wis. Const., Art. 6, § 3. The courts have held that this refers solely to statutory law. State v. Industrial Commission, 172 Wis. 415, 179 N.W. 579 (1920); State v. Milwaukee Electric Ry. and Light Co., 136 Wis. 179, 116 N.W. 900 (1908). Nonetheless, the statutory provisions have been defined broadly along the lines of the common law. W.S.A. 14.53(1); Cf. W.S.A. 14.53(2)(12).

13. The Massachusetts Constitution provides for the Office of the Attorney General, but does not ever refer to the nature of his duties. M.G.L.A. Const. Amend., Art. 82. For a discussion of the early history of the office, see: Hammonds, "The Attorney General in the American Colonies", 1 Anglo-American Legal History Series 5 (1939). Cf. Mass. Const. (1780) Ch. 2, § 1, Art. 9. The Massachusetts courts, however, have held that, absent statutory restriction, the Attorney General is vested with the common law powers of his office. Commonwealth v. Kozlowsky, 238 Mass. 379, 131 N.E. 207 (1921). Cf. Commonwealth v. Tuck, 37 Mass. 356 (1838) and Commonwealth v. Andrews, 2 Mass. 409 (1807)--for the power to enter a nolle prosequi; Parker v. May, 59 Mass. 336 (1850)--for the power to institute proceedings to enforce a charity; and Attorney General v. Trustees of Boston Elev. Ry. Co., 319 Mass. 542, 67 N.E. 2d 676 (1946); Attorney General v. Suffolk County Apportionment Com'rs, 224 Mass. 598, 113 N.E. 581 (1916);

Attorney General v. City of Boston, 123 Mass. 460 (1877)--for the power to seek a writ of mandamus. Additional definition is given to the office by the statutes. M.G.L.A., c.12, §§ 1-11A.

14. Similar to the constitutions of Massachusetts and New Mexico, the Pennsylvania Constitution provides for the Office of Attorney General, but does not specify its duties. Pa. Const., Art. 4, § 8. Some of these duties are spelled out in the statutes. 71 P.S. § 244. In addition, a long line of judicial holdings have supplemented the statutory language. Commonwealth ex rel. Minerd et al. v. Margiotti, 325 Pa. 17, 188 A. 524, 530 (1937). For similar holdings, see also: Commonwealth v. Ryan, 126 Pa. Super. 183 A. 764 (1937); Appeal of Margiotti, 365 Pa. 330, 75 A.2d 465 (1950); and Matson v. Margiotti, 371 Pa. 183, 88 A.2d 892 (1952). For a discussion of the Attorney General's power to supersede local prosecutors see In re Shelley, 332 Pa. 358, 2 A.2d 809 (1938). Cf. Note, "The Common Law Powers of the State Attorneys General to Supersede Local Prosecutors," 60 Yale L. J. 560 (1951).

15. The New Mexico Constitution establishes the Office of the Attorney General but does not confer upon it specific powers. New Mexico Const., Art. V, § 1. Thus far, the New Mexico courts have refused to recognize the Attorney General's common law powers. State v. Davidson, 33 N.M. 664, 275 P. 373 (1929). The statutes, however, broadly define the Office's powers and duties. N.M.S.A. 4-3-2.

16. There is no provision for the Office of Attorney General in the Indiana Constitution. The Attorney General's powers and duties are prescribed by statute. Gibson v. Kay, 68 Ore. 589, 137 P. 864 (1914). The Indiana courts have held that the Attorney General has no common law powers. Ind. Stat. Ann., §§ 49-1902--49-1939.

17. There is no provision in the Oregon Constitution for the Office of the Attorney General. The Office has been established by statute, Ore. Rev. Stat. §§ 180.010-180.240. However, the Oregon courts have recognized the Attorney General's common law powers as vesting either in the Attorney General or the District Attorneys. State v. Home Brewing Co., 182 Ind. 75, 105 N.E. 909 (1914). [See Ky. Law Review Supplement].

18. A complete listing of the position of these jurisdictions may be derived from Howison, "Attorney General--Common Law Powers over Criminal Prosecutions and Civil Litigation of the States," 16 N.C.L.R. 282 (1938) and Johnson v. Commonwealth, 291 Ky. 829, 165 S.W. 820 (1942). (Note recent constitutional changes in Iowa and Maine.) Colonial History:

See Anglo-American Legal History Series: Series 1, No. 2 [TB 100 A 589] States Calif., Pa., Ohio, Oregon, Indiana.

19. Wilentz v. Hendrickson, 133 N.J. Eq. 447, 454, 33 A.2d 366, 374 (Chancery 1943); see also, Hunt v. Chicago, Horse & Deemmy Ry. Co., 121 Ill. 638, 13 N.E. 176 (1887); Commonwealth v. Margiotti, 325 Pa. 17, 188 A. 524 (1936); For comprehensive survey of the jurisdictions, see Sheppard, "Common Law Powers and Duties of the Attorney General," 7 Baylor Law Review 1 (1955).

20. Id.

21. State v. Stewart, 184 Miss. 202, 184 So. 44 (1938); Morelev v. Berg, 216 Ark. 562, 226 S.W. 2d 559 (1950) (dictum).

22. Withee v. Lane and Libby Fisheries Co., 120 Me. 121, 113 A. 22 (1921); State v. Young, 54 Mont. 401, 170 P. 947 (1918).

23. State v. Rector, 134 Kan. 635, 8 P.2d 323 (1932).

24. In re Equalization of Assessment of Nat. Gas Pipe Lines, 123 Neb. 259, 242 N.W. 609 (1932).

25. People v. Beech Securities Co., 86 Cal. App. 2d 703, 196 P.2d 143 (1948); State v. Gottewere, Wash. , 47 P.2d 18 (1935).

26. State v. Robinson, 101 Minn. 277, 112 N.W. 269 (1907).

27. Pierce v. Superior Court, 1 Cal. 2d 759, 37 P.2d 460 (1934).

28. Attorney General v. Williams, 140 Mass. 329, 2 N.E. 90 (1885).

29. Attorney General v. Parker, 126 Mass. 216 (1879); Trustees of Princeton University v. Wilson, 78 N.J. Eq. 1, 78 A. 373 (Chancery 1910); see Attorney General v. Brown, 1 Swanst. 265, 36 E.R. 384 (1816).

30. United States v. San Jacinto Tin Co., 125 U.S. 273, 8 S. Ct. 850 (1888); United States v. American Bell Tel. Co., 128 U.S. 315, 9 S. Ct. 90 (1888).

31. VanRiper v. Jenkins, 140 N.J. Eq. 99, 45 A.2d 344 (E. & A. 1947); N.J. Rules of Court, R.R. 4:37-2.

32. State v. S. H. Kress & Co., 115 Fla. 189, 155 So. 823 (1934); Wilentz v. Hendrickson, 133 N.J. Eq. 447, 33 A.2d 366 (Chancery 1943).

33. Commonwealth v. Margiotti, 325 Pa. 17, 188 A. 524 (1936); Commonwealth v. Kozlowsky, 238 Mass. 379, 131 N.E. 207 (1921); People v. Daniels, 8 Ill. 2d 43, 132 N.E. 2d 507 (1956); See DeLong, "The State Attorney General" 25 Journal of Criminal Law and Criminology 358, 361-365; Devlin, The Criminal Prosecution in England, p. 20; Prynn's Case, 5 Mod. 459, 87 E.R. 764; Regina v. Allen, 1 B & S 850, 121 E.R. 929 (1862).

34. Appeal of Margiotti, 365 Pa. 330, 75 A.2d 465 (1950).

35. State v. Jones, 252 Ala. 479, 41 So.2d 280 (1949).

36. See infra n. 19 and 20; State v. Robinson, 101 Minn. 277, 112 N.W. 269 (1907).

Extracted from: Powers, Duties and Operations of State Attorneys General (1977) (Study by National Assoc. of A.G.s)

6. SELECTION, TERM AND REMOVAL

This chapter examines the important issues of how the Attorney General is selected, how long he serves, how he can be removed, and how a vacancy in the office can be filled. Some of these issues, particularly that of election or appointment, have been subject to controversy since the first state governments were established. This report discusses existing practices and presents the arguments on both sides of these issues.

Method of Selection

Table 6 shows methods of selecting the Attorney General. He is popularly elected in forty-two states. He is appointed by the Governor in six states (Alaska, Hawaii, New Hampshire, New Jersey, Pennsylvania, and Wyoming), the three territories (Guam, Samoa and the Virgin Islands), and the Commonwealth of Puerto Rico. In Maine, he is selected by the Legislature and in Tennessee, by the Supreme Court.

The Attorney General is the most prevalent elective official in state governments except for the Governor who is elected in all jurisdictions. The Treasurer is elected in forty-nine jurisdictions, the Secretary of State in thirty-eight, the Auditor in twenty-five, and the Superintendent of Public Instruction in nineteen, compared to forty-two states in which the Attorney General is elected.[87] The 1970s witnessed a marked acceleration of the trend toward election of the Governor and Lieutenant Governor on a single ballot and such a practice is now followed in twenty-two jurisdictions. Thus, the Attorney General is actually the most common official who is elected on a single ballot. Where very few, but more than one, state executive officials are elected, the Attorney General is usually included among these few. He is, for example, among the three executive officials elected in Virginia, among the four elected in Maryland, Michigan and New York, and among the five elected in Rhode Island, Colorado, and Utah. However, he is not one of the two elected officers in Alaska, Hawaii, Guam, and the Virgin Islands, the four in Pennsylvania, nor the five in Wyoming.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

Most of the first state constitutions specified that the legislature would choose the Attorney General. The concept of universal suffrage had not yet taken hold, nor had the idea of direct election of many officials.

87. Council of State Governments, THE BOOK OF THE STATES, 114-115, 121-122 (1976-77).

TABLE 6: SELECTION AND TERM OF ATTORNEYS GENERAL

	Elected	Appointed by	With Consent Of	Length of Term	May succeed Himself
Alabama	x			4	Yes
Alaska		Governor	Legislature	4	Yes
Arizona	x			4	Yes
Arkansas	x			2	Yes
California	x			4	Yes
Colorado	x			4	Yes
Connecticut	x			4	Yes
Delaware	x			4	Yes
Florida	x			4	Yes
Georgia	x			4	Yes
Guam		Governor	Legislature	Indefinite	Yes
Hawaii		Governor	Senate	4	Yes
Idaho	x			4	Yes
Illinois	x			4	Yes
Indiana	x			4	Yes
Iowa	x			4	Yes
Kansas	x			4	Yes
Kentucky	x			4	No
Louisiana	x			4	Yes
Maine		Legislature		2	Yes
Maryland	x			4	Yes
Massachusetts	x			4	Yes
Michigan	x			4	Yes
Minnesota	x			4	Yes
Mississippi	x			4	Yes
Missouri	x			4	Yes
Montana	x			4	Yes
Nebraska	x			4	Yes
Nevada	x			4	Yes
New Hampshire		Governor	Exec. Council	5	Yes
New Jersey		Governor	Senate	4	Yes
New Mexico	x			4	Yes
New York	x			4	Yes
North Carolina	x			4	Yes
North Dakota	x			4	Yes
Ohio	x			4	Yes
Oklahoma	x			4	Yes
Oregon	x			4	Yes
Pennsylvania	X	~~Governor~~	~~Senate~~	4	Yes
Puerto Rico		Governor	Senate	Indefinite	Yes
Rhode Island	x			2	Yes
Samoa		Governor		Indefinite	Yes
South Carolina	x			4	Yes
South Dakota	x			4	Yes
Tennessee		Sup. Court		8	Yes
Texas	x			4	Yes
Utah	x			4	Yes
Vermont	x			2	Yes
Virgin Islands		Governor	Senate	Indefinite	Yes
Virginia	x			4	Yes
Washington	x			4	Yes
West Virginia	x			4	Yes
Wisconsin	x			4	Yes
Wyoming		Governor	Senate	4	Yes

Andrew Jackson's administration brought a new ethic to American government. The common man was considered competent to vote and to hold office, and direct election of officials became the rule. State constitutions provided for election of numerous officials, usually including the Attorney General.

A study published in the Law Library Journal[88] showed how methods of selecting Attorneys General developed in nineteen states; of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. The trend then turned toward election. For example, North Carolina's 1776 Constitution provided for appointment by the legislature; its 1868 Constitution provided for election. Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election. Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election. Virginia's 1776 Constitution provided for selection by the legislature; its 1902 Constitution provided for election. Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

Wyoming, in 1899, became the first "new" state to provide for appointment of the Attorney General, thereby ending the trend toward popular election. Alaska's 1959 Constitution and Hawaii's of 1960 provided for Gubernatorial appointment, following the policy set by their territorial conventions in 1950 and 1956.

Strong arguments can be advanced for either system of selection. There is not necessarily a correlation between the selection process and the extent of the Attorney General's actual powers. For example, the Attorney General is elected in Delaware and appointed in Alaska, but in both jurisdictions he has control over all legal and prosecutorial functions. In some states, the Attorney General is independently elected, but he exercises little power at either the state or local level. Thus, a "strong" department of justice can be developed under either system of selection, but is not guaranteed by either.

Proponents of an appointive Attorney General usually base their arguments primarily on the need to strengthen the executive. As one view, the commentary on the Model State Constitution developed by the National Municipal League says that:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people,

88. Lewis Morse, Historical Outline and Bibliography of Attorneys General Reports and Opinions, 30 LAW LIBRARY JOURNAL 39-245 (1937).

[illegible] is equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.[89]

The Model Executive Article for state constitutions recommended by the Committee on Suggested State Legislation of the Council of State Governments limits statewide elective officials to the Governor and Lieutenant Governor, who are elected jointly. This article was developed by the Committee on Constitutional Revision of the National Governor's Conference.[90] Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. Proponents of an appointive Attorney General argue that his function is to advise the Governor, who should be permitted to choose his advisors. They believe that the two officials are more likely to maintain the close and harmonious relationship that is necessary for effective liaison if the Attorney General is appointed.

Advocates of appointment also contend that the elective process may not assure professional competence. The pressures of politics and the time involved in campaigning limit an Attorney General's abilities to serve effectively, and many highly competent people would not be willing to undergo the election process. They also argue that the Attorney General's primary function is to interpret the law, which is a technical task and should not involve the political process.

The arguments for an elective Attorney General were cogently summarized by Attorney General Louis J. Lefkowitz in a position paper submitted to the New York Constitutional Convention in 1967. General Lefkowitz reviewed the Attorney General's duties in some detail, pointing out they were predicated upon his role as an independent official, and concluded that:

> To sum it up-- an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor-- an attorney in the fullest and finest sense of the word.[91]

89. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

90. The Council of State Governments, 1970 SUGGESTED STATE LEGISLATION, 3-4.

91. Attorney General Louis J. Lefkowitz, Position Paper of Louis J. Lefkowitz Attorney General, to Constitutional Convention, Committee on the Executive Branch, June 1, 1967, Albany, N. Y.

An equally strong position in favor of election was taken by Attorney General William J. Scott before an Illinois Constitutional Convention; he stressed that the Attorney General's roles of "government watchdog" and "attorney for the people" required independence from the Governor.[92]

The primary argument for an elective Attorney General is that he is an attorney for all the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs. As discussed elsewhere in this report, the courts increasingly recognize that the Attorney General is responsible to the people, not just to the government. It is further argued that the Attorney General has important administrative and legal functions, such as programs in consumer protection and environmental control. In executing these functions, an Attorney General is acting as an advocate for the people; not as agent of the executive branch. His duties usually include prosecution of election violations, collection of debt, and bringing of suits in the name of the people; these responsibilities are outside the scope of the Governor's duties.

Many arguments for election center around the fact that the Attorney General's duties are of the highest order and he should enjoy the same independence as a member of the judiciary. He should not be a creature of the Governor, but should render opinions solely on the basis of law. He should not be the advocate for a particular administration, but should be free to oppose policies which he considers inconsistent with the law and to investigate apparent wrongdoing.[93]

In reference to the argument that an appointed Attorney General is a non-political technician, it should be noted that appointment does not necessarily remove the office from politics. Some appointed Attorneys General have been politically active as potential candidates for other office or on behalf of the Governors they serve. At the federal level, Presidents have frequently named as Attorneys General persons who had been active in their campaigns. This has also been true in some states.

In his remarks to a legislative committee which was considering a constitutional amendment to make the office appointive, former Attorney General Meyer of Nebraska mentioned several arguments in addition to those usually advanced by proponents of election. These included the following points: the Governor can appoint men with legal training to his staff if he feels he needs lawyers of his own choosing. Much of the Attorney General's work is in areas in which the Governor has little or no interest,

---

92. News from William J. Scott, Attorney General, State of Illinois, Feb. 16, 1970.

93. See summary of arguments presented to New York's constitutional conventions in Robert H. Gordon, The Relationship Between the Attorney General and Agency Counsels in New York State, (Unpublished Ph.D. Dissertation, Syracuse U.), Ch. 1 (1966).

[illegible] county attorneys and [illegible] criminal [illegible]als. The Governor is only one of many state officials [illegible] Attorney General advises.[94]

Confirmation of Appointment

In all six states where the Governor appoints the Attorney General on a regular basis, the appointment is confirmed by either the Senate (Hawaii, New Jersey, Pennsylvania, Wyoming), both houses of the Legislature (Alaska), or by the Council (New Hampshire). Confirmation in Pennsylvania requires a two-thirds vote of all the members of the Senate.

In Puerto Rico and the Virgin Islands confirmation is also by the Senate. In Guam, appointments are made with the "advice and consent" of the legislature, but in Samoa appointment is by the Governor with no requirement for confirmation. Although all Pennsylvania Attorneys General of recent years have been in the same political party as the Governor, the requirement of approval of two-thirds of all elected members of the Senate for confirmation of the Attorney General gives the minority party considerable leverage over appointments. However, there has been no indication that this has caused problems.

The various model constitutional provisions that have been proposed differ on the need for confirmation. The Advisory Commission on Intergovernmental Relations' suggested constitutional provision for a short ballot for state officials provides for Senatorial confirmation of gubernatorial appointments. The Model State Constitution of the National Municipal League does not mention confirmation. There is no extensive literature on the precise manner in which appointments are to be confirmed.

Length of Term and Succession

Forty-four states presently provide a 4-year term for the Attorney General and four states a 2-year term. Tennessee sets the term at 8 years and New Hampshire at 5. In Guam, Puerto Rico, and the Virgin Islands, the Attorney General is appointed for an indefinite term. In Samoa the term is also of an indefinite length, although there is a minimum of 2 years for an initial appointment. Table 6 indicates the length of Attorneys General's terms and the statutory or constitutional rules on succession.

The trend is clearly toward longer terms. Most states initially limited terms of officals to 1 or 2 years, on the theory that frequent elections kept government closer to the people and prevented the accretion of power by elected officials. Many states prohibited successive terms on the grounds that official power must be limited. These arguments may have been cogent at a time when Attorneys General had relatively few duties to

94. Letter from Attorney General Clarence A. H. Meyer to Patton G. Wheeler, November 24, 1970.

perform, and those duties were relatively well-defined. Present Attorneys General, however, cannot effectively operate with a 2-year term, which does not allow time to master the duties and responsibilities of the office. Neither should they be subjected to the continuing campaign requirements imposed by an election every 2 years. For these reasons, NAAG has recommended that the Attorney General should be elected or appointed for a minimum term of 4 years and should be allowed to succeed himself.

The number of Attorneys General serving 2-year terms has declined drastically in recent decades. In 1937 there were twenty-one, but this number fell to nine by 1970, and then to four by 1976. Arizona went from 2 to 4 years in 1970, and Wisconsin and New Mexico in 1971. The 1972-73 legislative biennium saw four more states-- Iowa, Kansas, South Dakota, and Texas-- shift to a 4-year term for the Attorney General. Apparently only one jurisdiction has ever gone from a 4-year to a 2-year term; this occurred under Missouri's 1865 Constitution, which was adopted during Reconstruction; its 1875 Constitution later restored the 4-year term. Voters in Rhode Island, however, rejected a 1972 proposal which would have extended from 2 to 4 years the terms of all executive officers, including the Attorney General.

Succession to Office

There are few restrictions on Attorneys General serving successive terms. There are restrictions on Attorneys General succeeding themselves in only three states: Kentucky, New Mexico, and Alabama. Only Kentucky absolutely prohibits immediate succession by the Attorney General. Until 1968 Alabama allowed only one term, but an amendment that year permitted the limited succession. New Mexico restricts the Attorney General to two terms of 2 years each.

The Model State Constitution permits succession in the office of Governor because:

> The main argument favoring restriction in the term of the governor is fear of bossism or perpetuation through use of the powers of the office. This is always a possibility but the better argument seems against any form of restriction. Limitations of this kind restrict the right of the people to pass judgment upon the quality of the gubernatorial service performed for them and thus eliminates from the field the one candidate about whom the voters usually know the most. From a program policy point of view, a restriction on service in office affects the governor's ability to develop and implement a long-range plan.[95]

These arguments apply with equal validity to the office of Attorney General.

---

95. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 66 (1963).

Removal from Office

There are several mechanisms for removing Attorneys General: impeachment, recall, or removal by the Governor, the legislature, or the courts. Information is not available on how often these methods have been used or how well they operated.

Of the fifty-four jurisdictions, thirty-six provide for impeachment. It is the only method of removal provided in twenty-one of these jurisdictions. Impeachment processes vary, but proceedings are usually instituted by the lower house and, if it votes to impeach, the charges are tried by the upper house. In New York, the judges of the court of appeals, the state's highest court, sit with the members of the Senate as a court of impeachment. In Nebraska, impeachment charges are proferred by the unicameral Legislature and tried before the state supreme court. In Missouri, impeachments are tried before the supreme court after charges are filed by the House of Representatives.

An impeachment proceeding is rare, and is used only under the most extraordinary circumstances. Apparently, the last impeachment trial of an Attorney General was in Kansas in 1934. That action resulted in an acquittal.[96] Whatever grounds are prescribed grounds for impeachment, the method is not a common means of removing officials. It can be utilized only when the legislature is in session and is quite time-consuming.

Fifteen states which provide for impeachment also provide alternative removal processes. In the ten jurisdictions where the Governor appoints the Attorney General, he may also remove him. In Hawaii, the Senate must consent to such removal. In New Jersey, the Attorney General can be removed by the Governor for cause only after an opportunity to be heard has been granted. In New Hampshire, the Governor and the Council may remove the Attorney General on address of both branches of the legislature. Five other states provide for Gubernatorial removal of the Attorney General. In Maine, the Governor and Council may remove on address of both branches of the legislature. In New York, removal is by the Governor and the Senate. The Governor of Arkansas, upon address of two-thirds of the members of each house of the legislature, may for good cause remove the Attorney General. In Michigan and West Virginia the Governor may remove him without the consent of another authority.

The legislature stands alone as a removing authority in proceedings other than impeachment in seven states. Recall may be used to remove the Attorney General in Arizona, Colorado, Louisiana, North Dakota, Oregon, Washington, and Wisconsin; he is an elective officer in all of these states. Louisiana reports that the district court may remove the Attorney General, and Maryland indicates that removal is attendant to any conviction in a court of law.

As a result of a court decision, an Arizona Attorney General was removed from office in 1947, having been adjudged guilty of conspiring to violate the gambling laws of the state. The Governor considered the office

96. New York Times, February 7, 1942, at 17.

vacant and appointed a new Attorney General. The former Attorney General, however, refused to vacate his office. Subsequent court action affirmed the validity of an act which provided that an office would be vacant if its incumbent was convicted of a felony. The court reasoned that the powers of impeachment were an added protection for the public, not the sole protection.[97]

Filling Vacancies

Vacancies in the office of Attorney General may be filled by appointment of the Governor, the legislature, or the supreme court. An overwhelming majority of the jurisdictions indicate that the Governor fills vacancies as soon as they occur. In Maine, Massachusetts, New York and Virginia, the legislature fills vacancies; however, if it is not in session, the Governor makes the appointment. In Maine, he must have the approval of the Council. Tennessee provides that the Supreme Court will fill vacancies, since it normally appoints the Attorney General. In two states, Louisiana and New Jersey, the First Assistant or Deputy Attorney General becomes Attorney General until a successor is elected or appointed.

Where the Attorney General is appointed, it would seem proper that the appointing agent also fill vacancies, as is the case in all such jurisdictions. The rationale for filling vacancies when the office is elective is less clear. All but four of the states which have an elective Attorney General permit the Governor to make appointments. Three permit the legislature to name an Attorney General, and in one the deputy is promoted. Allowing the Governor to fill vacancies in an elective office seems contrary to the chief arguments for election, those concerning independence from the executive. It is also questionable whether a Governor of one party should be allowed to fill a vacancy in an office which was held by a member of the opposite party.

An Assistant or Deputy Attorney General is often promoted to fill a vacancy, even if this is not required by law. If the Deputy Attorney General is promoted to fill a vacancy, the chances of continuity in office programs are greater; however, the Attorney General may select his chief deputy according to different criteria from those he would use in selecting his own replacement.

Vacancy appointments for elective offices usually are valid only until the next general or next biennial election. At that time, if the original term has not elapsed, a short-term Attorney General is elected. This point was litigated in Oregon.[98] The statute creating the Oregon office in 1891 provided that the Attorney General would be elected for a full 4-year

---

97. State ex rel. De Concini v. Sullivan, 66 Ariz. 348, 188 P.2d 592 (1948).

98. State ex rel. Baker v. Payne, County Clerk, 22 Ore. 335, 29 Pac. 787 (1892).

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILL TOBIN
Asso Editor
And Gen Manager

FRED DICKEY
Executive Editor

age A-10 Sunday, March 29, 1981

Let the voters decide

IN FORTY of the 50 states, the attorney general is elected to his post.

It is a system that obviously works well, because the people are the ones who decide who should fill this high office. And an attorney general answerable to the people is one who is responsive and responsible.

It's strange, therefore, to see the burning vigor that marks the opposition to letting the people of Alaska choose their attorney general. Yet there are those who apparently fear the people.

For example:

"I can think of no single change that would be more damaging, more harmful, more dangerous to the character of government."

THAT'S THE astonishing view of Superior Court Judge Thomas Stewart of Juneau, who testified the other day before a legislative hearing on a proposed constitutional amendment that would require the election of Alaska's attorney general, who is now an appointee of the governor and answerable only to him.

More damaging? More harmful? More dangerous?

How can this be? What is being proposed is part and parcel of the democratic form of government in which the people have the right to elect their leaders. Are elections damaging, harmful and dangerous to the character of our government?

We confess to lacking the judicial wisdom that graces members of Alaska's Superior Court. But all along we thought the character of our government was rooted in the elective process.

There are many Alaskans — and we're among them — who believe the present system of having the attorney general appointed, rather than elected, has proved less than satisfactory.

We don't buy the argument of former Attorney General Norm Gorsuch that "legal competence and electablity are not necessarily equal." The statement is incomplete. The rest of it is that "legal competence and appointability are not necessarily equal, either."

IT'S QUITE POSSIBLE that an incompetent lawyer might be elected attorney general. But his shortcomings would be readily evident and it's a sure thing that he would serve only a single term.

It's also quite possible — in fact, very likely — that some extremely capable men and women would seek election to the office, were it up to the people to decide. An elected attorney general would be his or her own person, with his or her reputation on the line. And he or she would be no lackey to any governor, or any legislature.

There's no doubt that were the office an elected position, it would be used by many as a stepping stone to higher office — the governorship, for example, or a seat in the U.S. House or U.S. Senate. But what's wrong with that?

Rep. Fred Brown, the Fairbanks Democrat who heads the House Judiciary Committee sponsoring this constitutional change, sees this as a means of strengthening government. So do we. And we hope he prevails so that this matter can be brought to the ballot for a vote of the people.

term in 1891. Further, it mentioned that vacancies would be filled by Gubernatorial appointment until the next general election, when an Attorney General would be chosen to fill out the term or commence a new term. The Governor appointed an Attorney General in 1891. The question of the case was whether there was to be an election to fill out the first "quasi-term" in the general election of 1892. The court ruled that there was to be such an election.

The Supreme Court of Georgia reached the opposite conclusion in a 1939 case.[99] It held that the office of Attorney General was created under the judicial article, hence the rule that provisions for elections to fill vacancies in executive positions did not apply to it. The Gubernatorial appointee to fill a vacancy created by a resignation was to serve out the full 4-year term of office without standing for election.

99. Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939).

- SAVE -

(Atty Gen. should be elected)

REPORT

OF

ATTORNEY GENERAL FRANCIS B. BURCH

TO THE

CONSTITUTIONAL CONVENTION OF MARYLAND

September 29, 1967.

When I spoke to the Delegates to the Convention at Goucher College in June, I was asked to prepare a comparison of my office and that of the United States Attorney General and to comment on the advisability of having an office in this State similar to that of the Solicitor General of the United States. I have had prepared a chart comparison on the former which should also dispose of the latter, and copies are being made available for your files.

I have also secured and reproduced for your use the presentation made by Louis J. Lefkowitz, Attorney General of New York, to the Constitutional Convention of that state.

The Southern Conference of Attorneys General, which met in Williamsburg in July of this year, passed a formal resolution to record the considered, unanimous position of its members on the issue which faces this Convention and those in other states as to the Attorney General's role in government. Copies of that resolution are also being made available for your study.

Generally, I would like to impress upon you the enormous importance of a centralized law office for the State - founded in the Constitution - the holder of which should be elected by the people and responsible to the people alone. It is delicate to discuss the merits of an office which I, myself, hold, but the importance of this question to the State compels me to do so. Were I not Attorney General, my

familiarity with the history of this State and a deep concern for the future of its government and the ultimate welfare of its citizens would require my participation here, even lacking the invitation I enjoy today. I view your labors under your commission from the electorate as one of the most critical undertakings in the history of this State. This Convention's work is of the highest dignity. It deserves the efforts which each of you will necessarily bring to bear on it. It deserves the most forthright discussion and candid participation that anyone having a view to express can bring to it. I am proud to have played some small part in making this Convention a reality, by virtue of the special case which we arranged, tried and won in the Court of Appeals earlier this year. I am also proud that it was my predecessor, Attorney General Finan, who set the wheels for this Convention in motion by advising Governor Tawes that he had the right, even absent legislative action, to appoint the Constitutional Convention Commission and then urging him to do so.

The office of Attorney General is founded in the earliest days of the common law. It is one of the first by-products of liberty, for a despot needs no lawyer to argue his cause. The "lawyer for the Crown" is the concept many have of an Attorney General. Although that was valid in the early days of our country, it has been inappropriate in this and other states for many generations.

The Constitutions of the great majority of states make the Attorney General the lawyer for the entire State government and not of any branch. You will note that the Attorney General is provided for in Article V of the Maryland Constitution, separate and apart from the Executive, Legislative and Judicial branches. Section 3 of that article sets forth the duties of the office as follows:

1. To represent the State in all cases in the Court of Appeals (of Maryland) or in the Supreme Court of the United States.

2. To give his opinion in writing whenever required by the General Assembly or either branch thereof; the Governor, the Comptroller, the Treasurer or any State's Attorney, on any legal matter or subject pending before them.

3. When required by the Governor or General Assembly, to aid any State s Attorney in prosecuting any suit or action brought by the State in any court of this State.

4. To commence and prosecute, or defend any suit or action in any of said courts on the part of the State, which the General Assembly, or the Governor, acting according to law, shall direct to be commanced, prosecuted or defended.

5. To perform such other duties and appoint such number of deputies or assistants as the General Assembly may from time to time by Law prescribe.

6. It is also, on numerous occasions, the duty of the Attorney General to represent the Judiciary, to give opinions on matters of conflict between members of circuit courts and between the courts and other branches of government, State and local.

The present Constitution prohibits the Governor from employing any additional counsel, in any case whatever, unless authorized by the General Assembly, and Article 32A, Section 5 similarly prohibits any State agency from being represented by an attorney other than the Attorney General.

Under Article 32A of the Maryland Code, the general charge, supervision and direction of the legal business of the State and the representation of all boards, commissions, departments, officers or institutions of State government is entrusted to the Attorney General. The only actual State agency excepted from this coverage is the Public Service Commission.

The office, then, is quite unique. The notion that the Attorney General of this State is or should be a member of any one branch of government is erroneous and I respectfully suggest that it should be cast aside. The office has provoked little controversy during the past 100 years, perhaps because during that time it has been one of the wheels of government which squeaked not at all and thus caused little concern. That is as it should be.

There is no provision in the federal Constitution for the Attorney General. This would seem to be caused by a number of circumstances prevailing at the time of the Revolution and since then. In the federal system the Attorney General occupies one of the highest offices in the Executive branch. He sits in the Cabinet and advises the President, but he has no connection with the Congress. The office of United States Attorney General was created by the "Judiciary Act" of 1789. It carried with it a compensation of $1,500.00 per annum, which included the legal work, office expenses, stationery, a clerk and firewood. I would think that the lack of concern for the office at that time reflects the condition of mind of the people. "Federalism" was less a concept than "confederation".

I remarked earlier that a despot needs no lawyer. Having only recently overthrown a despot who accomplished his purposes by force of arms, the people could hardly have been expected to have anticipated the legal work which their infant federal government would eventually require. Indeed, in the beginning, the United States was considered only one of the Attorney General's private clients. Less than generous budgetary complements were added to the office in 1818 - a $1,000.00 allowance for a clerk, and in 1819, when another $500.00 expense allowance was given by the Congress. It was not until 1870 that the Department of Justice was authorized by Congress and the legal services of the federal government, i.e., the Executive branch, were brought under one head.

I would call to your attention at this point the concurrence in history of the recognition of the United States Attorney General as an officer of high rank and the nature of the office created by our Constitutional Convention of 1867. By 1870 the federal system had generated enormous momentum; the divergences between branches were marked and sometimes more than mildly hostile. I suggest that they continue so today. By the time of the realization of the importance of the office, the occasion had long since passed when either the Congress or the President would welcome a constitutional third party between them and, even if they had, the great difficulty of amending the federal Constitution might have dissuaded them from the effort. Great and popular causes bring about such amendments but the practice of law seldom attracts public notice.

Today, the United States Attorney General is a legal officer in the sense that he is an advocate in favor of executive agencies and an advisor, in practical as well as legal matters, to the President alone. Congress and its committees have their own counsel and it is by no means infrequent that their opinions, as well as the objectives of their advocacy, clash with those of the Attorney General on behalf of the Executive.

Such is not the case in Maryland, and I feel that we are decidedly better off. We are the attorney for the legislature. Each year the Attorney General staffs an office in

the State House during the sessions of the General Assembly. The Delegates are free to call on us for assistance, for advice on the limits of their powers, for interpretations of provisions of the Constitution, for analysis and legal criticism of proposed legislation. To the credit of the members of the Assembly, I am happy to report that our services are frequently employed and our technical and legal advice is most often followed. Similarly, State agencies having interests in bills before the legislature frequently submit their proposals to my office for legal review or for drafting prior to submitting them to the Assembly. Quite often we are called upon by the Assembly or by an agency to explain a bill concerning an area of legal expertise. I am confident that the net result of this relationship is better legislation and the avoidance of many pitfalls.

Again, the Attorney General's office reviews all legislation for constitutionality prior to presentation to the Governor. In most cases we have no criticism. In those cases in which there is a legal question, our views are stated in a formal opinion and presented to the Governor with the bill in question. The decision whether to veto a bill on account of legal defects is entirely his.

Except in rare instances where proposed legislation affects some aspect of government with which we have special expertise, we offer no advice to either the legislature or the Governor on questions of policy, unless requested, and we feel

that they have particular confidence in the objectivity of our legal advice. To what extent the existence of an independent legal officer lodged among the three major branches of government has promoted harmony or discouraged discord among them is almost impossible to measure. But I think the effect is there, and we have had very few instances of hostility in our history.

The routine work of the Attorney General's main office is staggering. We manage to handle our assignment with a staff of 24 home office assistants only by exacting the utmost diligence from each man. Ten assistants are assigned to handle criminal work. This includes the briefing and arguing of approximately 450 criminal appeals in the Court of Special Appeals, approximately 50 habeas corpus cases in the United States District Court and 20 or more cases in the United States Court of Appeals for the Fourth Circuit. In addition, the Criminal Division maintains the Attorney General's Digest (keeping abreast of current legal developments in criminal law) and advises State's Attorneys, trial magistrates, the State Police and the Baltimore City Police Department.

The Civil Division represents all State agencies and departments and State officers too numerous to list. Representative of these are the Comptroller, the Clerks of Court, the Registers of Wills, Orphans' Courts, the Insurance Department, the Department of Public Welfare, the Department of Assessments and Taxation, the University of Maryland and University Hospital,

the Department of Correction, the Department of Parole and Probation, the Department of Education and its collateral agencies, the Maryland Port Authority, the Fiscal Research Bureau, the Commissioner of Personnel and the Department of Budget and Procurement. There are numerous other agencies which could be listed under the classification "major" and, of course, there are many which are less than demanding, like the Apple Commission. Several, like the University of Maryland and the Port Authority, are autonomous. Together, they amount to more than 150 State "clients" overall We attend administrative hearings, represent the agencies and officers in the courts and respond to their verbal and written inquiries.

Annually, we handle about 300 cases in the Maryland Tax Court, 200 cases in the Circuit Courts and approximately 25 cases in the Court of Appeals. Each year we appear in the Supreme Court of the United States on matters of interest to the State of Maryland or in which the State is a party. In 1965 there were 11 such cases; in 1966, 5; 1 has been argued so far this year; and 2 are pending.

Some agencies, such as the State Roads Commission, the Department of Forests and Parks, the Workmen's Compensation Commission and its collateral offices require the full time of one or more of my assistants. This work engages the services of 36 other assistants and special attorneys. But all report to and are under the direction and control of the Attorney General, and there is unity and cohesion in this work.

Each agency of this State which publishes rules and regulations must submit them for our review prior to publication. There is scarcely an activity of the State, in any of its branches, which does not, in one fashion or another, concern the Attorney General's office.

We defend in the courts all acts of the General Assembly which come under attack from any quarter. The official opinions of the office are published in bound volumes each year. They are of high legal status, considered persuasive authority by the Court of Appeals and are the only and final authority on many questions. These opinions form a body of law which is kept in force by the application within the office of the doctrine of stare decisis. Every effort is made to keep matters of interpretation uniform from administration to administration. Prior opinions are seldom overruled and then only with the greatest reluctance in cases of clear prior error. This was the heritage of the office when I came to it.

The Commission's Proposal

The present draft Constitution prepared by the Constitutional Convention Commission makes no provision whatever for an Attorney General but relegates the office to a position that may await the judgment of the legislature.

I have followed with great interest the published proceedings of the Constitutional Convention Commission and the treatment given to the office of Attorney General. Neither

having been privy to the deliberations of, nor having been asked to testify before, that body, I am unable to comment in detail on the factors which influenced the Commission's recommendation. The "Commentary" included in the Interim Report and made available through the Secretary of State contains a number of explanations of the Commission's rationale which seem less than persuasive. Anyone not acquainted with the labors and sacrifices made by the members of the Commission might conclude that the Commentary evidences a somewhat cavalier disinterest in, and a general unawareness of, the current functions and past history of the office. All that I can say, most respectfully, is that too little consideration was apparently given to the matter to weigh adequately the value of the institution as it now stands or to anticipate the effect of its abandonment.

I.

The Commentary casts aside lightly the need for guarantees of the independence of the office. This proposition is dismissed with the assurance that "the prominence and prestige of the position ... and the professional reputation of the lawyer filling the office" will insure his independence.

Tell me the name of my successor and the names of his successors and I shall give you my opinion whether their professional reputations and the prominence and prestige of the office will insure objectivity and diligence. Identify them now and I shall give you my opinion whether their wealth and

character will permit them to be independent. Speak their names abroad and others may give you different opinions. And tell me in twenty - thirty, yes, in years when most of us are gone, who will be the man in whom we are now urged to place such confidence. You cannot predict it; nor can I; nor can anyone.

You can, however, provide for an office designed to guarantee the continuation of the qualities we all desire in an Attorney General. We are, and must remain, a people dependent upon law and not men; of permanent legal "institutions" and not floating casual "positions". The Attorney General as provided in the present Constitution is his own man. He owes his position and his allegiance to the people. He represents their State and not any man, branch, agency or personality within it. He can choose, and has for decades chosen, his staff for their competency and interest and, unlike an appointed chief legal officer, no one can require him to take an unqualified assistant for political expediency or reward. Largely for this reason, the Maryland Attorney General's office has earned and maintained for many years the highest professional regard, the unquestioned respect of the Bench and Bar.

II.

The Commentary recognizes the fear that an Attorney General appointed by the Executive might not be able to render objective service to the Legislative branch.

I agree that he could not as a matter of legal ethics and, after some time, he might not as a matter of political expediency.

The Commentary suggests that, if this situation should arise, the legislature could provide for its own counsel by statute.

What then would be the fortunes of the State? Would this arise unless the deepest animosity shall have developed between the General Assembly and the Governor? Would you or anyone who loves his state and acts out of concern for its well being care to participate in the creation of such a situation? Cannot we, now, realistically predict the ripe possibility of such governmental fragmentation? It is unnecessary, for the law is the same no matter whose interests are sought to be served, and neither the law nor its servants, nor those it affects, are aided by partisan interpretations of it.

III.

The Commentary states with assurance the belief of the Commission that "the advantages of having the Attorney General appointed by the Governor far outweigh any disadvantages".

The proposition is easily stated but hardly supported. The advantages of the appointed Attorney General are not set forth and we have no experience in recent history to rely upon. To the contrary, history shows that an appointed Attorney General was considered to be so unsatisfactory that after almost 100 years

the framers of the Constitution determined that he should be elected. The disadvantages of an appointed Attorney General are inherent, for even the Commission anticipates that the legislature can be put in need of having its own counsel. The Commentary supports its conclusion with a footnote reference that "several state constitutions provide that the Governor shall appoint the Attorney General subject to the advice and consent of the Senate".

Such a system suggests to me the possibility that lack of "consent" can cause the office to remain vacant for long periods of time or that the necessity of compromise can produce an Attorney General so weak and ineffective that the office might just as well be vacant. And the footnote authority adds no real substance to the proposition advanced. Lest the true weight of the judgment of our sister states be overlooked, we should note that the great majority of the states (44) do not allow the office of Attorney General to be determined by future legislative action.

Two state constitutions (New Jersey and Pennsylvania) establish the office to be filled by appointment of the Governor with the advic and consent of the legislature. In Tennessee, the Attorney General by constitutional mandate is appointed by the Supreme Court. One state (Maine) provides in its Constitution for the Attorney General to be elected by the legislature. But <u>forty</u> state constitutions provide that the Attorney General shall be elected by popular vote. It should be noted that Michigan, which revised its Constitution in 1964, retained the

Attorney General as a constitutional, elective officer and the Constitutional Convention in New York, which has finalized its draft on the Attorney General's office, has retained it as it was - both constitutional and elective. Of the six states which do not treat the Attorney General as a constitutional officer, four (Alaska, Hawaii, New Hampshire and Wyoming) provide that the position shall be filled by executive appointment subject to legislative consent, while the other two (Indiana and Oregon) have established the office as elective by statute. On the question, per se, of elective vs. appointive Attorney General, 43 states provide that he shall be elected, 6 provide that he shall be appointed by the Governor and one that he shall be appointed by the Supreme Court.

IV.

The Commentary suggests that "a system of checks and balances should operate between branches of government" but that "a system of checks and balances within one branch of government is inappropriate for governmental efficiency".

Again, I can only suggest a statement of this sort having been made due to a lack of understanding of the present nature and functions of the office. The Attorney General is not a part of any branch. He is a "check" or a "balance" in the sense that his legal analysis acts as moral suasion directed to the sensitivities and good consciences of those in all branches of the government. He is a "check" in the sense that the pause for

calm deliberation by one who is moved to seek his advice sometimes "checks" an action lacking considered reflection or prompted by a misconception of the law. He is a "balance" in the sense that reason and discussion add balance in all human endeavors. The Attorney General advises at the peril of public and professional contempt should he transgress on the law for personal or political motives. His legal advice is ignored by those in all branches of government at the same peril.

V.

The Commentary again assures us that "the omission [of the office of Attorney General] from the constitution will promote efficient organization and administration, increase the flexibility of the entire administrative arrangement, and permit effective administrative reorganization without constitutional amendment as the need arises".

The inference that the office now interferes with efficiency, flexibility or reorganization is, I submit, without basis. The office has nothing to do with those matters which are of legislative or executive concern.

Nor should we forget that another Convention, that of 1850, saw fit to omit the office of Attorney General and that the Convention of 1864 reinstated the office in its present posture without any debate whatever on its necessity; not only did it reinstate the office but it strengthened it by removing the power of appointment from the Governor. The Convention of

1867 continued the office, again as an elective office and without debate as to the need for it in the Constitution.

The only significant debates which occurred in 1864 related to salary. A briefly stated motion to provide for the appointment of the Attorney General because of his confidential relationship to the Governor was defeated by a vote of 33 nays to 24 yeas immediately upon consideration of the draft. Even in discussions on the salary matter, the vehemence of the delegates toward the evils which had crept into state government as a result of the 1850 omission was apparent. The salary suggested was $3,000.00 and some delegates argued in hot temper that, rather than pay less, it would be better to leave the office vacant. Delegate Stirling of Baltimore City silenced such comment by observing:

> "In regard to the necessity of such an office as this, I think every one who has paid any attention to the subject has been convinced of the vices of the present system. The governor has absolute discretion to employ any counsel, and any number of counsel he pleases; and so with other officers of the State. ... And besides the opinion of a man who has no official responsibility is not such an opinion as the State is entitled to. The opinion of such a man is not matter of record to the extent that the opinions of the attorney general would be. Besides that, you now have half a dozen men, one of whom may give one opinion and another give another opinion, which will control the action of the State authorities upon the same subject in the course of two or three years. But by having this officer, you at least secure uniformity of opinion during the term of his office.

"Besides that there is a supervision exercised over the State's attorneys. This does not go back to the old system, but secures advice and co-operation in such a manner as to give us a uniformity in the criminal administration of the State. As it is now, with the different views that may be taken by different State's attorneys in regard to criminal law, one man may be acquitted by one State's attorney in one county, and another convicted by another in the next county, on the same charge. It is an anomaly that the criminal administration of the State of Maryland should be represented by twenty-one different officers. This office unites the judicial system of the State so far as responsibility is concerned. ..."

In the same debate Mr. Chambers of Kent County commented:

"... We have suffered nothing but evil, inconvenience and mischief, since the destruction of this office. We all know that at the last convention this office was discontinued, not from any belief that the office was unnecessary, but purely from personal considerations, having relation to the individual who it was supposed was going to have the office. It was abolished not in consequence of any judgment formed in regard to the expediency of the matter, but solely from personal considerations."

Not a voice was raised to dissent from the accuracy of these observations. In the 1867 Convention, the committee on the Attorney General and State's Attorney reported a draft which provided for the appointment of the Attorney General by the Governor with the advice and consent of the Senate. On third reading a motion from the floor by Mr. Ford of St. Mary's County and carried by a vote of the delegates opened the draft to an amendment providing for election of the Attorney General in the present form. The sketchy record of the Proceedings does not

reveal what debate might have occurred, if any, but it establishes that the elective office amendment carried by a vote of 76 to 21.

It is a matter of deepest concern to me that the Commentary concludes the discussion relating to the Attorney General by saying with apparent satisfaction that "the governor and lieutenant governor ... are [to be] ... the only statewide officers elected by popular vote". I, myself, would never consider virtuous or justified the disenfranchisement of the people either by removing their voting power or by diluting it by reducing the number of officers subject to election. The people have the right to determine the identity of those who would direct the destiny of their state and I cannot, in good conscience, fail to defend that right when it is put in jeopardy. Nor can I concede that appointment has dignity but election lacks honor.

I speak to you today not for myself but for my office - and what it means and should continue to mean for the government of this State. The American Indian is said to have established the maxim that one should not judge another man unless he has walked in his moccasins for three days. I have occupied the position of Attorney General for almost a year and my respect for the office has continually deepened. I have attempted to imagine the position of Governor as the draft Constitution envisions it and I ask myself: "If I were Governor, would I like to appoint the Attorney General?" Selfishly, I can conceive that I might. But another question haunts me: "If I were Governor,

should I appoint the Attorney General?" I know that it should not be done in this State.

You are the repositories of the power of the people, and the trust is awesome. You are invited to literally throw to the winds of fortune an office which has served your State and its people with great distinction. The office has produced some of the great leaders of this century, men like Isaac Lobe Strause, Albert C. Ritchie, Ogle Marbury, Alexander Armstrong, Thomas H. Robinson, William Preston Lane, Herbert R. O'Conor, William C. Walsh, Hall Hammond, C. Ferdinand Sybert and Thomas B. Finan, all elected Attorneys General. Run the list of the holders of this office and you will find the great men of our history and our present day. Governors, judges of the Court of Appeals, judges of the Circuit Courts, distinguished community leaders abound in such degree that one is both exalted and humbled to be included in their number. And the men who served as assistants and deputies form a legion of their own in which may be found the leaders of the Bar, members of the highest courts and, indeed, members of this Convention, including your esteemed President. They were all trained to the discipline of objective service to their state. They all were formed in the mold of men nurtured by the freedom to act on legal matters as lawyers guided by, and restricted to, the accomplishment of the noble purposes of their profession. They left the office in that mold and they passed it on. I would so maintain it and, God willing, pass it on.

PROCEEDINGS - - - - -
1920 Constitutional Convention
State of Nebraska
Should Attorney General be
Elected or Appointed

Save!
For use whenever
somebody again brings
up the idea of having
the Gov. appoint the
Attorney General

PROCEEDINGS

1920 Constitutional Convention

State of Nebraska

Should Attorney General be Elected or Appointed?

Page 939

"MR. ABBOTT: * * *. The advocates of the short ballot or the unified and centralized appointive power starts from a premise which, it is admitted, necessarily compels you to adopt their conclusions. I do not admit the premise. They cite you, by way of example, great business institutions, in which centralized responsibility is the only way to get results, and I agreed with them, but I do not agree that the parallel is applicable to institutions such as the State of Nebraska. What is the purpose of organizing a business institution? Simply and solely to make money, is it not, without regard to the individual rights of those who go to make and build that organization. It has been only a short time ago since it was the uniform policy of the great business institutions of this country to discharge a man when he reached the age of thirty-five on the theory that such a man could not give service and produce results. If we admit the premise, that the purpose of government is simply and solely to make money and to exercise governmental duties as economically and as cheaply as possible, the conclusion is absolute, that the single ballot must come. I deny it, and I say to you, gentlemen, that when the government of this state or any other state, comes to the point that only one man is vested with the power to control its destinies, that the pendulum will turn the other way. The curse of this country today is the fact that so few people take an interest in political matters, in comparison with the large number of electors, and so few take the trouble to vote, and when you take from them this added interest in political matters, you simply accentuate the present tendency. I say the difference is this: A business institution is organized for profit, and profit alone, and a certain rule applies in managing its affairs. A political institution, such as state government, is organized for the purpose of first securing the interest of all the people in that government, and secondly, representing all of the diversified interests of the people, and this simply for the purpose of protecting their rights, and not for the purpose of making money for anyone. * * *."

Page 1324

"MR. BYRUM: * * *. There are people in this Convention who believe in the short ballot, and believe that the definition of a representative form of government means not that the people shall elect the men who shall represent them, but that in state affairs you elect a governor, who will appoint whom he pleases to transact the rest of the activities of the state. There are men here who honestly believe that. I have no quarrel with those men, but I want to say that this is not the principle of a republican or democratic form of government. * * *. One hundred men sent down here to represent the wishes of the people of this state going upon record that all they can do to change and better the Executive Department of this state is to go back home and say, 'Gentlemen, we deny you the right of franchise upon two or three of these state officers; two of them we will do away with entirely, and the other one, who happens to be the Attorney General, we will deny you the right of your franchise upon him. You shall not elect an Attorney General, to advise the state officers and the county officers throughout the state any longer. The time has come when we want to take that right away from you.' Does that sound nice, and will that sound nice when you go home to your people? I say I stand for the people to elect their officers. In part, the Convention has disagreed with me on that proposition, but I believed, and I still believe that it is right, and I believed that, in spite of the eloquent language used by your Governor in pointing out the duties of supreme power. I believe that, in spite of the Scribes and Pharisees of the State Journal, who have been harping upon the proposition of a short ballot, and pointing the way to Omnipotence. * * *. What are you doing? You are doing away with two elective officers and you are saying to the Governor that he shall have the right to appoint the Attorney General. I want to say if there is a single officer in the State of Nebraska that ought to stand out with an individuality, with an independence uncontrolled by any department of the state, that officer is your Attorney General. * * *. The rest of these officers are mostly ministerial, but the Attorney General stands out and must have a free hand and individuality regardless of the Governor or anybody else. The Attorney General is supposed to be the advisor of the Governor in this state, as well as all other state officers. Are you going to put it in a shape so that the Governor can not only run every other department in the state, but so he can direct and tell what the legal department shall do?"

Page 1332

"MR. STEWART: * * *. Our reasons for retaining the Attorney General, but appointive, were that the Governor is given the supreme executive power of the State, and he is commanded to take care that the laws of

the Governor. It has to do with the property, the lives and the liberty of the people as to other office has; it is the most important office in the State, in my opinion. When I go up into my country the people would ask me 'Why did you have him appointed? Why did you take away from us the right to vote for the Attorney General' What can I say? I might tell them they wanted a short ballot. Supposing I told them that. Well they would say 'Why didn't you leave off the Secretary of the State or the State Treasurer, that is not as important an office as the Attorney General?' I will tell you gentlemen, there are things worse than a long ballot, and that is taking away from the people the right to elect their own officers, and edging in, step by step, and taking the rights away from the people. It is the basic principle of a republican government and a democracy, that the people shall elect the men they want to perform the various duties of the various offices, and I will tell you, they are not going to give them up, and you will not fool them by allowing someone to appoint them, and then the Legislature to confirm the appointment. * * *."

Page 1339

"MR. OLESON: * * *. It is not upon the theory of the short ballot that some of those officers, in my judgment, should be made appointive, but it comes more from the question of efficiency that might be obtained in those particular officers. There may be better opportunities for the selection of a good, competent Attorney General by appointment, for the reason that a $5,000 attorney will not go out and make a campaign, first for the primary nomination and spend all of that time from his business, to say nothing of the expenditure of possibly $5,000 to be elected to an office for a term of two years. His expenses would eat up his first year's salary, and he would obtain about twenty-five hundred dollars a year for the two years service, and if he sought re-election at the end of two years he would have the same program to go through with. For the purpose of obtaining a more efficient and competent man than the people would have an opportunity to decide upon, I believe that it would be better and to the better interest of the state to appoint a man for that office who would be a $5,000 man and who could consistently accept such a position with the honor attached to it, that is when he did not have the expense and trouble of going before the people, among all kinds of candidates, and try to have his name placed upon the ballot, and thereafter elected. It is not merely a question of the short ballot principle, but it is the question of what is for the best interests of all the people of the state, and furthermore, the Governor is charged, in this state, and in our present Constitution, and in this proposal, with the discharge of the duty of looking after the enforcement of all the laws of this State, and for their efficient administration. That does not include the criminal laws alone, but it includes

all of the laws over which he is charged, as the Executive officer, to see they are enforced, and he cannot do so himself unless he be a lawyer that you elect to that position, and he must therefore rely upon the legal branch of the Government to enforce that which you have charged him with being responsible for, and how shall he do it? He shall do it through the legal department of the State, and how can he best do that unless you give him the right to appoint a man in whose ability he has confidence. The Governor is further checked by having the Senate and House of Representatives, in joint session, concur in the selection of that man, and I think it would be a sufficient safeguard that an inefficient man would not be selected by the Governor for that office. * * *."

Page 1345

"MR. BEELER: * * *. Personally, I do not believe in centralizing government. It is true that those who advocate the short ballot believe that the power of the state government should be centralized in the Governor, checked only by the election of a comptroller or auditor, and upon the same principle as the government of the United States is being conducted, and the men believing in that form of government have appeared before the Committee and have argued with individual members and with a group of members constantly for the past four or five weeks to center the power entirely in a Governor elected by the people, letting him appoint the heads of all departments and eliminate all the elective officers except the Governor and Lieutenant Governor, who would have no power unless he acted as Governor, and a Comptroller, or Auditor. * * *. I believe that it would be better for the state if the Constitution should provide for departments and place the executive officers elected by the people over as many of the departments as possible, and then let the other remaining ones be appointed by the Governor."

Page 1346

"MR. SPILLMAN: * * *. Again this provides for the appointment of an Attorney General. I would like to shorten the ballot if we can do it without hurting ourselves. But I am afraid that we have not arrived at that point in our affairs in this state where we want the head of the government to appoint the Attorney General. If there is any man who holds office in this state and who should be elected by, and responsible to the people of the state, it should be the Attorney General. The head of the state may have good judgment in his appointment, he may be able, from his experience, to appoint an excellent

man to act as Attorney General, but I do not believe, under ordinary circumstances, that the judgment of one man is better than the combined judgment of the electors of the State of Nebraska on that proposition, and an Attorney General should be a check upon all the officers in the state, and he should be free, if necessary, to proceed against any department or against any officer in the state. I do not want his hands tied; I do not want him to be responsible to any individual or to any particular department. I want him free in the discharge of his duties. These are things, Mr. Chairman, that I am afraid we are going to be asked about, and when we are asked about them I want that we all should be able to reply to the people that elect these different officers that I have mentioned, that 'we have left it so that you may be able to have a voice in who shall serve you in these respective capacities.' "

Page 1347

"MR. WALL: Calling your attention to the remarks of the gentleman from Pierce, Mr. Spillman, relative to the chief law enforcement officer of the state, I wish to say that the majority of the Committee on the Executive Department took the view that the proposition reported in their proposal was the better way to meet that proposition; that the chief law officer of the state should not be indebted to any political division, -- ought not to have to respond to any political party; that he ought to be non-partisan, as they believed, and they believed it a safer and better way to get competent ability, was to allow the Governor of the State to select him. The practice is an old one of the executive power selecting the law officer of the territory enclosed within that jurisdiction. It comes from the old practice of employing the council for the crown. It was to carry out the policies of the crown, the policies of the administrative department, that that was done. As we understand, he has no report, ordinarily, like other state officers have, to make to the Legislature; he may report expenditures and operations in his department, but that is only a matter of general information and news. It is not essential in the appropriation of the budget or in the general management or welfare of the commonwealth that he be abolished and it was admitted by the Committee that that was the better way. * * *."

Page 1351

"MR. VOTAVA: From the discussion in the Committee this morning I think the majority of the members are in favor of electing a Lieutenant-Governor. I think that the Attorney General should be elected by the people of the state and we have heard strong arguments why he should not be appointed.

We have also heard arguments why he should be elected and the arguments in favor of the election of the Attorney General appear to me to be the stronger. The appointment of an Attorney General would make him a private counsel of the Governor, and I do not think the people of the state want that. They want someone in addition to the Governor in the Executive Department, who would see that the rights of the people are protected."

Page 1355

"MR. ABBOTT: There are two lines of argument with reference to the question of the selection of the Attorney General. The first, that he shall be selected by appointment as presented to you by the Chairman of the Executive Committee in a masterly manner. I want to say a word in regard to the other method of selection. First, by answering just in a word the argument for appointment. I much regret that the apparent tendency of government at the present time, both state and national, is toward centralization. If this body adopts the report of the Committee, the tendency in this state toward centralization will be greatly accentuated. If in addition to that the Governor is given the power of appointing the Attorney General, the tendency will be yet more accentuated, as you will readily see when I call your attention to one or two considerations. The Chairman of the Executive Committee has told you truthfully, that you will probably be able to get better attorneys and higher priced men if the selection is by appointment by the Governor. He might have pursued the subject further by adding that the tendency of the Governor in all of his appointments will be to perpetuate himself and his policies in control. Therefore, he will at once select the ablest men he can find in the state who will voice his ideas, and who will assist him in consummating those policies which he adopts when he gets into office. On the other hand, suppose, as now, the people elect the Attorney General. It may be true, and I will concede for the sake of argument that it will be true, that we will not succeed in getting as able a man in that position, but we will be able to get a man in that position who will not necessarily take his orders from the Chief Executive of the state. He will take his orders from the people who elect him, and insofar as he will be actuated by one motive or another, he will therefore more aptly represent the wishes of the people of the state, should those wishes happen to run counter to the wishes of the man who for the time being is Chief Executive of the state. In other words, the question is, shall we accentuate the centralization by giving to the Governor the power of selecting the men who shall assist him in building up a machine, or shall we accentuate the other tendency by giving to the people the chance to elect a man who may act as a check upon that tendency? I believe the latter is the proper principle, and I therefore trust that his amendment will prevail."

Page 1357

"MR. BRYANT: * * *. This country is so connected that it ought to be centralized, and it is the best thing for democracy that it is centralized. Now what is the use of going to the people and telling the people that it is their government? It is the most preposterous thing in the world. They are simply voting. If you give them a chance and give them centralized power and hold them responsible, you are giving them something efficient and they can hold someone responsible whom they want to carry out their will. We hear a great deal of criticism around here about governors. Anybody who is familiar with the history of the state, as the gentleman from Douglas, Mr. Abbott is, ought to know that whatever we can say about our governors, we have not been any more efficient or successful with our Attorney General. You select an incompetent Governor in this state and I will agree to furnish an incompetent Attorney General right alongside of him. We have sometimes made very good selection, and we have sometimes had deputies in there that were better than their chiefs, but I have great respect for the present Attorney General. I am aware of the fact that there is an argument in favor of the Attorney General, that he is a quasi-judicial officer, and you say he should stand independent of the Governor, and there is some force in that argument, but the President of the United States, with the advise and consent of the Senate, appoints his Attorney General. * * *."

Page 1358

"MR. DAVIES: * * *. When it comes to the question of attorney general, I find that the Constitution of the State of Nebraska provides that the chief executive is empowered largely with the enforcement of the law. The exact language being, 'The supreme executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.' Appreciating the fact that good men may differ upon these questions, and the fact further that there is a sentiment of loyalty of our people attached to our Constitution which it is difficult to have shaken from them, yet if there is any office in the entire land which, to my notion, ought to be appointive by the governor it ought to be the attorney general for the reason that the chief executive, being empowered with the enforcement of the laws, would take pride and pleasure in appointing a man whom he knew would be efficient. There should be extreme harmony between the chief executive and the Attorney General, and it seems to be that if we are to change our form of government at all, and if we are to infringe upon the old Constitution and shorten the ballot and make any office appointive, the office of Attorney General is one which I think should be left to the judgment of the Governor. I think there is a logical reason why the chief

executive of this state, authorized and empowered by the Constitution to enforce the laws, should have the appointment of the law officer of the state. To that end, therefore, I feel that, notwithstanding the prejudice that exists against any modification of our present form of government, yet it does seem to me that the work of the committee to this extent should be adopted and it would be without any harm to the state and possibly with great benefit to the Governor in the enforcement of the laws and likewise to the Attorney General."

Page 1358

"MR. BYRUM: The argument that has just been made is perhaps one of the strongest that could be mad in favor of electing an attorney general. The law of this state, at the present time, puts the duty upon the governor to see that the laws are enforced. That same law puts the same duty on the attorney general. I cannot conceive of any reason why there should be anything but harmony between those two officers, whether they are elective or appointive. There must at all times be harmony between the governor and attorney general. The law says that there shall be harmony between these two officers because it puts that responsibility upon both of them. That ought to make harmony, but supposing a condition should arise where there will not be harmony. Supposing that you elect a governor of the state of Nebraska. You will vote, for instance, to enforce the liquor laws of this state, or any other law as far as that is concerned, but suppose we take the liquor law. You elect a governor in this state who opposes that law. The law says to the attorney general, 'You go out in this state and enforce it.' And the law says to the governor, 'You do the same thing.' How are you going to get harmony? The proposition is, if the governor is not in favor of enforcing that law, the only way he can get harmony is to make the attorney general bow to his will and that will be against the orders of the people and the law of this state. Is that the kind of harmony you want? He will appoint that kind of a fellow. How do you know he will appoint that kind of a fellow? If a man has an object in view and he is governor of the state of Nebraska and he proposes not to enforce a single law, he will not appoint a man who will enforce it, and the only way you can get harmony then is when the governor refuses to do his duty. There is the proposition and there is nothing wrong with it.

"MR STEWART: Supposing you turn that illustration around, and the attorney general refuses to prosecute. What is the governor going to do?

"MR. BYRUM: You have not harmony, of course, but I am not supposing that the people will elect a man that will not be in harmony with the wishes of the people. I am putting the proposition plain and straight. There can be only one

proposition to bring harmony if there is not harmony already. If there is not harmony, then you have to bring harmony by letting the Governor say what that harmony shall be. Why should you not give it to the Governor? The Attorney General is at the head of the legal department of the state. Has he not the same right to appoint a deputy under him that will perform the duties of that office, or would not his judgment be just as good as the judgment of the Governor of the state? Why should he not have the opportunity to appoint the men under him? Can he not select a man who will do those things just as well as the Governor? Does he not know just as much about the duties of that office as the attorney general? He may not be, and probably will not, be an attorney. I think the attorney general is the most important office in the State of Nebraska, and I think the people should have the right to elect him.

"MR. STEWART: I have a few words that I want to say and I am expressing my own opinion and not that of the Committee necessarily. I think that Mr. Byrum's argument there is unsound. That is to say, if you elect a Governor and Attorney General, who must enforce the prohibition law, as an illustration, if either one of them balked, your enforcement fails. It seems to me that, in a case of that kind, you had better try to select one good horse that will pull, rather than to take chances on two balky horses, which you are contending for, as I understand the logic of your argument. * * *. To get back to this matter of the selection of attorney, that is what I wish to talk about. Let us take as an illustration a concrete case of three hundred thousand citizens of the State. In order to protect their rights, it becomes necessary for them to employ an attorney I wonder if they would employ as their attorney to protect their private rights, an attorney of whom they knew nothing except what he said about himself in newspaper advertisements. You gentlemen who are urging so strongly the election of an attorney general would advise those men, 'Now do not surrender any of your rights. Do not trust it to any representative. You might pick out a committee of good men to go and look up the lawyers you are going to employ, but you are giving up your rights when you do that. You must not trust anybody else or any of your neighbors, or you are giving up your rights.' If that argument is unsound in the case of private litigants, it is unsound in the case of the state. If we had some way of selecting these candidates for Attorney General other than their newspaper advertisements and the posters that they put up on the telephone [illegible], that rule might not be true; it would make quite a different case, but we have to elect candidates on the strength of what they say about themselves. They recommend them selves strongly, of course. Practically all municipalities appoint their attorneys. The city attorney in Lincoln and Omaha are appointed and in most other large cities of the state and country generally, and have you heard any special complaint about them, that the people of these municipalities have had their rights taken away from them? I do not think you will find any complaint. I never heard of any.

"They say if the Governor appoints the Attorney General it would be his favorite and he would not serve the rest of the officers as he should but would feel as though his duty is especially to the Governor. I do not think it works out in that way in cities. We have the Commission System in the City of Lincoln, and I have never heard and I do not believe anybody else has ever heard that the other members of the Commission have complained because an attorney appointed by the mayor did not serve the other interests as he should. So it seems to me these arguments are unfounded. However, I say those are my individual views and opinions on this question."

Page 1361

"MR. SCOTT: In answer to the argument of the gentlemen, Mr. Stewart, that there has been but one governor elected to succeed himself in a quarter of a century. I want to call your attention to the fact that heretofore we have not had the centralized power that would give the governor the chance to perpetuate himself in office. Under the system that they are now seeking to establish, the governor might succeed himself by reason of the centralized power that is given him. My idea of the matter is to retain the present condition of affairs to prevent the governor from unduly perpetuating himself in office. The argument that the gentleman has made is not to the point for the reason that conditions have not existed that he now seeks to bring into existence. He then further asks the question if there were 300,000 stockholders in a corporation would those stockholders select their attorney from men concerning whom they knew nothing except what they said about themselves? I will ask the gentleman, would those three hundred thousand stockholders select the president of their company for no other reasons than the qualifications that that president told of himself in the newspapers? There is not an argument against the election of an Attorney General that does not apply to the selection of a Governor. The people of this state are required to depend upon such knowledge as they may get, or the information that they may have on a governor or secretary of state or state superintendent or other officers from whatever source they may get that knowledge, whether it be through the newspaper statements or what they say about themselves or otherwise. The people can just as intelligently vote for an attorney general as they can for any other state officer. If you will apply the arguments against the election of an attorney general to the other state officers, you will find it will apply as well and instead of electing any state officers, why not turn them over to the Supreme Court of the Legislature."

OUTLINE OF REMARKS

Attorney General Clarence A. H. Meyer

ATTORNEY GENERAL SHOULD BE ELECTED - NOT APPOINTED

I. "ATTORNEY GENERAL OF U. S. IS APPOINTED." (Little Hoover: "As in the federal government, the chief executive of the state should have the right to choose his cabinet officers.")

A. Vast difference. U.S. A. G. has broad administrative and policy-making functions in connection with the many bureaus placed in the Dept. of Justice -- Immigration & Nat; Narcotics Bureau; Bureau of Prisons; Parole; FBI -- Whereas we are law office -- not policy making.

B. U.S.A.G. is carry over from English government. There first known as Attornati Regis, the king's counsel. Function was to protect the king's privileges, lands and estates and to quell civil disturbances among the people in order to keep the king on the throne.

C. SIR THOMAS MORE ("A Man for All Seasons") beheaded by Henry VIII because he would not write an opin' n the way the king wanted it.

D. At common law, the function of the Attorney General was to safeguard the powers of the monarch - here this is not the case.

II. "GOVERNOR SHALL TAKE CARE THAT THE AFFAIRS OF THE STATE ARE EFFICIENTLY AND ECONOMICALLY ADMINISTERED."

A. If Governor feels he needs lawyers of his own choosing to help run the state, he has authority under existing law to hire all the lawyers he wants to.

B. He can authorize any state officer or department to employ its own counsel in any litigation.

C. Present and previous Governors have appointed men with legal training on their staff - those men can and do advise the Governor and the Departments under him. (Yeutter & Barnett)

D. But, would the Legislators want to go to the Governor's appointees for legal advice and opinions in all situations? Keep in mind that the Attorney General is also the advisor to the Legislature. (As well as being an officer of the Supreme Court.)

E. A very substantial part of the work of the Attorney General is in areas in which the Governor has little or no interest, official or otherwise. A great deal of our work is with the counties -- we must advise the county attorneys. Nor does he have a day-to-day interest in the criminal cases we handle in the Supreme Court. (We had 290 cases in the Supreme Court in last 2 years). (No need for Governor to control or supervise us in this work.)

III. "WILL PROMOTE GREATER 'HARMONY' AS WELL AS EFFICIENCY."

A. Have served under both Republican and Democratic Governors over the years and there never has been any lack of harmony. We don't give Democratic advice or Republican advice - we give legal advice.

B. Must keep in mind that not just the giving of legal advice to the Governor is involved. We give legal advice to the many departments which are under his complete control -- and these are the departments which people contact every day - motor vehicles, agriculture, etc. Atty. Gen. Lefkowitz of New York: "All of the various departments and agencies of government turn to the Atty. Gen. for legal advice and for the rendering of official opinions. Such opinions are acted upon daily and a great deal of the operation of the state government depends upon the nature of the advice that is so rendered. These opinions are rendered to all departments of the State government, those under the direction and supervision of the Governor and those under the direction of other elected officials. It is important to note that the opinions have a direct and significant impact upon the People in their daily life. Here is a compelling reason why the Atty. Gen. should continue to be independently elected. If the Atty. Gen. is appointed by the Governor, then of necessity his opinions must reflect the philosophy of that Governor or the relationship would not be a compatible one."

C. The late Joseph T. Votava in 1920: "The appointment of an Atty. Gen. would make him a private counsel of the Governor, and I do not think the people of the state want that. They want someone in addition to the Governor in the Executive Department, who would see that the rights of the people are protected."

D. "BUSINESS APPOINTS ITS LAWYERS."
Businesses are organized for profit to its owners and officers, and not necessarily for the profit of the people they serve.

E. "YOU GET BETTER MEN BY APPOINTMENT."
A Governor will be the first to admit that he makes mistakes in his appointments.

F. "GOVERNOR NEEDS TO APPOINT ATTORNEY GENERAL BECAUSE GOVERNOR IS RESPONSIBLE UNDER OUR CONSTITUTION TO SEE THAT THE LAWS ARE ENFORCED."
Primary responsibility is with county attorneys, sheriffs, police and the State Patrol. The Patrol is already under the direct supervision of the Governor, and he has the power to suspend any sheriff, county attorney, police commissioner, mayor, or any other officer who refuses to enforce the law.

G. CONCLUSION. O.S. SPILLMAN in 1920: "* * * I am afraid that we have not arrived at that point in our affairs in this state where we want the head of the government to appoint the Attorney General. If there is any man who holds office in this state and who should be elected by, and responsible to the people of the state, it should be the Attorney General. The head of the state may have good judgment in his appointment, he may be able, from his experience, to appoint an excellent man to act as Attorney General, but I do not believe, under ordinary circumstances, that the judgment of one man is better than the combined judgment of the electors of the State of Nebraska on that proposition, and an Attorney General should be a check upon all the officers in the state, and he should be free, if necessary, to proceed against any department or against any officer in the state. I do not want his hands tied; I do not want him to be responsible to any individual or to any particular department. I want him free in the discharge of his duties."

ALASKA BAR ASSOCIATION

P.O. BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RANDALL P. BURNS, EXECUTIVE DIRECTOR
RICHARD J. RAY, DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL

March 4, 1982

Representative Ramona Barnes
Chairperson
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: Election of Attorney General, District Attorneys and Judges

Dear Mrs. Barnes:

The Board of Governors of the Alaska Bar Association limits its legislative activities to those issues which impact on the administration of justice and the delivery of legal services to the public. One set of such issues is whether the present system should be changed to provide for the election of the Attorney-General, District Attorneys and/or judges. Below is a very brief discussion of the results of a February poll taken of the members of the Alaska Bar Association on those issues. The Board has directed that I communicate these results to you for your information. Thirty-five percent (35%) of the attorneys responded as follows:

1) elect Attorney General : No 71 %, Yes 29 %
2) elect District Attorney: No 79 %, Yes 21 %
3) elect Judges: No 82½%, Yes 17½%

Each respondent was given an opportunity to comment and repeatedly the following concepts were discussed.

The judicial branch of government in Alaska was deliberately not made a representative, elected body. It is an integral part of a three-branch, checks and balance

913

General are elected. Each respondent who so indictated such experience was opposed to changing our present system. The states of California, Illinois, Florida, Idaho and Oregon were specifically mentioned.

One example was emphasized where (in Florida) a new law school graduate entered the race for a judgeship at the last minute raising substantial campaign funds by attacking the judge's decision which had upheld a statute of the state legislature. He won thereby removing a judge with much experience and a solid reputation for fairness and efficiency on the the bench. He was thereby committed to a particular interpretation of a statute regardless of the facts of the case that might come before him. This result is contrary to the genius of our Anglo-Saxon system of justice which begins with the unalterable proposition that each party before the court has an absolute right to have his case decided solely upon the facts before the court.

The most repeated concept expressed by respondents who said judges, district attorneys and the Attorney General should be elected was that governmental decision makers should be elected by the voters.

We will try to provide such additional information or further discussion you may desire to the extent that we know or can ascertain the views of our members.

Yours very truly,

Karen L. Hunt
President

KLH:et

cc: Members of House

News From

William J. Scott

ATTORNEY GENERAL
STATE OF ILLINOIS

ADVANCE FOR MONDAY, FEBRUARY, 16, 1970

SPRINGFIELD, ILL., FEB. 16, 1970 - Attorney General William J. Scott said today there is undeniable evidence that the people of Illinois insist upon an elected Attorney General, rather than one appointed by a Governor.

Scott noted that during last week's statewide public hearings before the Constitutional Convention delegates two former Illinois Attorneys General and the Executive Director of the Better Government Association testified strongly in favor of leaving the selection of the Attorney General in the hands of the people.

Former Illinois Attorney General John Cassidy Senior of Peoria, who served that office from 1938 to 1941, firmly opposed the concept of an appointed Attorney General in the Con-Con hearings in Peoria.

Later in the week, at the hearings in Chicago, Scott's predecessor, former Attorney General William G. Clark told Con-Con's Executive Committee that the Attorney General must serve all officers of State government and his legal rulings to state officials and State's Attorneys of opposing parties should be free of any invisible pressures from the Statehouse, as could be the case if a Governor hand-picked and appointed the Attorney General.

At the same hearings, Richard E. Friedman, Executive Director of the Better Government Association and a former First Assistant Attorney General of Illinois, told the delegates that the Attorney General must be an elected official so that he can deliver opinions which might be unpopular with the governor, and in all other ways act as an independent officer of government, answerable only to the law and to the people of Illinois.

(MORE)

CON-CON HEARINGS

From another perspective, Scott noted that all three of these former top State officials were Democrats, underscoring the bipartisan accord on the need for an elected Attorney General.

Further, Scott said, three other key Democratic State officials now in office have publicly opposed the idea of an Attorney General appointed by a Governor. The three are State Treasurer Adlai Stevenson, State Auditor Michael Howlett, and Secretary of State Paul Powell.

From the Republican side, Scott noted that former G.O.P. Governor William G. Stratton also told the Con-Con delegates last week that the Attorney General should remain an elective office, and that the Governor already has sufficient power through his control of the budget.

Scott, also a Republican, said the issue is as basic as the basic right of the people to determine for themselves who will represent them in government.

Moreover, he stressed, the twin roles of "government watchdog" and "attorney for the people" demand that the Attorney General be answerable only to the people of Illinois, and not to the whims or motivations of any Governor.

- 30 -

Alaska Bar Poll

David → These are even later results, as more of the responses were returned, following Mrs. Hunt's letter. JPB

C. POLL RESULTS

Your response to the Board of Governor's opinion survey regarding whether you favor or oppose the election of the Attorney General, district attorneys, judges, and justices was very impressive. To date, 41% of the bar has responded, with the following result:

Question 1: Should the AG be elected?

Yes: 173 (28%) No: 438 (72%)

Question 2: Should District Attorneys be elected?

Yes: 128 (21%) No: 485 (79%)

Question 3: Should District Court Judges be elected?

Yes: 112 (18%) No: 501 (82%)

Question 4: Should Superior Court Judges be elected?

Yes: 110 (18%) No: 505 (82%)

Question 5: Should Court of Appeals Judges be elected?

Yes: 100 (16%) No: 509 (84%)

Question 6: Should Supreme Court Justices be elected?

Yes: 102 (17%) No: 510 (83%)

system of government. Further, judges should not interpret the law because of a temporary, single, explosive political issue: the need for predictibility and uniformity in our laws is too vital to the welfare of Alaskans. Likewise, judges should be able to uphold "unpopular laws" which safeguard the rights of individuals or groups who are not a part of the electorate who supported the people elected.

Of equal concern to the respondents was the realization that special interest groups could unduly influence court decisions and District Attorney prosecutions because of the amount of compaign contributions they could raise or the "party machinery" they could control. Likewise, concern was expressed about the backlog and system slowdown that would occur while judges and district attorneys planned for, solicited funds for and conducted an election campaign. This could be particularly harmful in small communities which have only one judge or District Attorney. Additionally, concern was expressed about the lack of uniformity of law enforcement that would result because district attorneys would be elected on different "platforms".

The concerns expressed about election of the Attorney General included possibility (in Alaska perhaps probability) of the Attorney General and Governor being of two different parties thereby introducing non-productive dissention in the administrative branch. The Attorney General's office becoming primarily a stepping stone to running for Governor was also mentioned as a disruptive possibility.

The confirmation by the legislature was viewed by some respondents as enccuraging scrutinty of the Attorney General by elected representatives thereby giving the voters final say about the Governor's selection. Likewise, the retention election of judges provides voter acceptance or rejection of the performance of judges. This process was viewed as a good balance and check on the initial appointment process.

Of particular interest are the uniform comments from attorneys who have practiced law and lived in states where judges and/or district attorneys and/or the Attorney

Alaska State Legislature

House of Representatives

Representative
RICK UEHLING

MEMORANDUM

RAU.

TO: Senator Vic Fischer, Chair, State Affairs Committee
FROM: Representative Rick Uehling
DATE: May 16, 1983

RE: CSHJR 7 (Judiciary)

As you know, the House Judiciary Committee Substitute for House Joint Resolution 7, proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general, is at this time scheduled to be heard before the Senate State Affairs Committee on Tuesday, May 24, at 3:00.

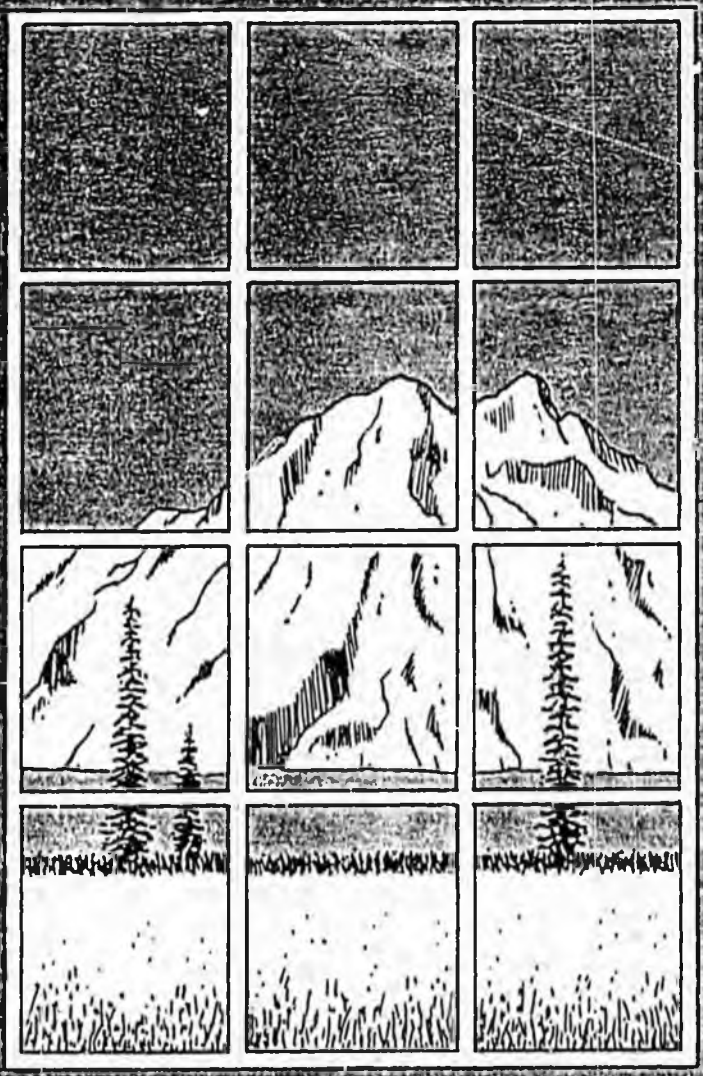
For your convenience, I have had my staff prepare the attached packet of background information on this important legislation. I hope you will have an opportunity to review this material in preparation for the hearing on May 24.

I encourage you and the other members of the State Affairs Committee to favorably consider CSHJR 7 (Judiciary).

/wtl
Attachment

1634 JUNEAU DRIVE • ANCHORAGE, ALASKA 99501 • (907) 274-4256
POUCH V • JUNEAU, ALASKA 99811 • (907) 465-4821

ALASKA'S CONSTITUTIONAL CONVENTION



Victor Fischer

subsequent proposal by Seaborn Buckalew of Anchorage to strike the secretary of state position was narrowly approved on a twenty-six to twenty-five vote.[67] While this action eliminated the secretary of state problem, most delegates were not comfortable with the elimination of an elected successor to the governor.

The delegates reconsidered the problems on the following day, and after much additional debate finally agreed to include in the article a secretary of state who would be chosen separately in the primary election by the voters of each party and then paired with the party's candidate for governor in the general election. Matching the top vote-getter for governor and secretary within each party would ensure that the selected secretary was popularly chosen and of the same political party as the governor.[68]

As approved under the constitution, the secretary of state succeeds to the governorship in case of a vacancy and serves as acting governor when the governor is temporarily absent from office. Further provision for succession in the event that the secretary of state is unable to succeed to the office or to act as governor was to be made by law. The convention preferred this formula to the initial committee proposal that when the secretary of state is unable to act, the president of the senate and the speaker of the house of representatives shall, in succession, act as governor until the disability is removed.

Attorney General

There was also considerable debate about whether the attorney general should be elected. A problem in this debate was the lack of agreement among delegates about the functions of an attorney general. Some viewed his role as strictly that of legal adviser to the governor and other officers in the executive branch. Others believed he performed similar functions with respect to the legislature. Yet others felt that because the attorney general prosecutes cases on behalf of the state, he should be independent of those, including the governor, responsible for administering the state's police functions. And some argued that one purpose of the attorney general was to keep the executive honest.

As alternative to a gubernatorially appointed attorney general as proposed by the committee, it was proposed to nominate attorney general candidates in a method similar to that provided in the judicial article for judges. Others suggested the attorney general be elected.

---

[67] *Ibid.*, p. 2093.
[68] *Ibid.*, pp. 2009-10, 2127-45.

However, by votes of twelve to forty and eighteen to thirty-six, delegates rejected the proposals for treating the attorney general differently from other heads of principal departments.[69] The argument against electing the attorney general, founded primarily on the belief in a strong chief executive, was summed up by George McLaughlin, himself a lawyer:

> If we yield in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place . . . I am violently opposed to the election of the attorney general . . . I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's . . . Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is . . . impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it and the courts can promptly overrule it . . . His functions are not quasi-judicial. He is another attorney giving an opinion . . . I think if we are going to have an attorney general, the power should be vested in the governor to appoint him without any screening by a judicial council or anything of the sort . . . (The) attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client . . . It is an attorney-client relationship and the relationship has to be based on personal selection.[70]

Executive Departments

The Committee on the Executive proposed that all executive and administrative functions be allocated among a maximum of twenty departments, all under supervision of the governor. There was little disagreement with this recommendation. The problems arose on the question of how each department was to be headed: by a single department head or by a governing board or commission that could in turn designate a departmental executive.

The committee's guiding principle was that single department heads would, in chairman Victor Rivers' words, " . . . help effectuate and make more efficient the strong executive type of government in the executive branch."[71] Delegates saw the state constitution as a means of eliminating and avoiding the proliferation of boards and commissions that had characterized territorial government. While they deemed it necessary then to provide Alaskans at least some

[69] *Ibid.*, pp. 2193-2200, 2215, 2226.
[70] *Ibid.*, p. 2196.
[71] *Ibid.*, p. 2034.

participation in gov
statehood and with t
elected governor. Acc
by the governor and s

However, delega
education" pressed f
should be headed b
independent board o
function from the g
compromise, delegate
department to be un
the department head.
ject to the governor's

John Coghill of
tional independence,
boards or commissio
approval from the gov
the majority of deleg
the executive branch
Steve McCutcheon, "
tired of rule by board.

Qualifications for Offi

The committee
cations for governor,
for Alaska residence r
all to ten years (and
fifty years would not
posal for a twenty-y
eliminated upon moti
dence and U.S. citize
years with a minimum
of being a "citize
cussion, mainly beca
and feared it could pro

Similar issues w
cations of department
that "The heads of all

[72] *Ibid.*, pp. 2245-52.
[73] *Ibid.*, p. 2249.
[74] *Ibid.*, pp. 2048-53, 206
[75] *Ibid.*, pp. 2053-58, 215

~~Vic~~/LS

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
1600 RHODE ISLAND AVENUE, N.W.
WASHINGTON, D.C. 20036

JUN - 1 1983

May 31, 1983

The Honorable Vic Fischer
State Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Fischer:

We were very concerned when we received an April 13, 1983, Alaskan Attorney General's Opinion from the office of Attorney General Norman C. Gorsuch on the meaning of Article I, Section 19, of the Alaska Constitution.

The opinion sent to Senator Pat Rodey and Representative Charlie Bussell noted that "The modern judicial view has increasingly found that the guaranteed right to keep and bear arms is not an individually protected right, but rather a collective right which allows the people of the various states to serve in a militia."

In the interpretation of a state constitution it would only seem logical to look to sister states with analogous guarantees for guidance. The Attorney General failed to do this. Furthermore, his reliance on interpretations of the Second Amendment are misplaced in view of the evolving scholarship on that topic which demonstrates that the Second Amendment guarantees an individual right to keep and bear arms.

The U.S. Senate Judiciary Subcommittee on the Constitution released a 1982 formal report citing clear proof, based on historical and legal evidence, that the Second Amendment to the Constitution was intended as an individual right of Americans to keep and bear arms.

The constitutions of 39 states have a right to bear arms guarantee. State Courts interpretating state constitutional guarantees such as Alaska's have held that an individual right is protected.[1]

The Alaska Constitution addresses a citizens' ability to bear arms in Article I, Section 19, which states: "A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Where the state guarantee includes a reference to the "common defense" or "the military" an individual right has been found to be protected.[2]

[1] State vs. Dawson, 272 N.C. 535, 159 S.E. 2d 1 (1968);
State vs. Kerner, 181 N.C. 574, 107 S.E. 222 (1921)

[2] State vs. McKinnon, 153 Me. 15, 133 A. 2d 885 (1957);
Glasscock vs. City of Chattanooga, 157 Tenn. 518, 11 S.W. 2d 678 (1928);
State vs. Kessler, 289 ORE. 359, 614 P. 2d 94 (1980);
and others.

Our assessment, based on case law from sister states and the intent of the framers, leads us to conclude that in Alaska the individual is guaranteed the right to keep and bear arms commonly held by the people.

The Constitution is the foundation upon which Alaska's laws are built. Because Attorney General Norman Gorsuch has interpreted Alaska's Constitution Article I, Section 19, to be nothing but an intangible abstraction, the NRA opposes his confirmation as Attorney General of Alaska.

Sincerely,

Louis J. Brame III
State Liaison

LJB:sms

11:07:38 ORIG: LA01 IN= 0016 OUT= 0097
FROM: MARCIE, ANC INFO TO: POM, JUNEAU INFO
TARGET: LJHL SUBJ: P O M

TO: REPRESENTATIVES BUSSELL, LINDAUER
SENATORS STURGULEWSKI, RODEY, V. FISCHER, RAY, KELLY, JOSEPHSON,
P. FISCHER, HALFORD AND MOSS

FROM: PEGGY MENTELE, 207 WEST 22ND, ANCHORAGE 99503- 277-5846 H 276-5121 W

I OPPOSE ELECTION OF ATTORNEY GENERAL WHILE LEGISLATORS PROPER FUNCTION IS TO STRIVE TO SATISFY THEIR PARTICULAR CONSTITUENCY AN ATTORNEY GENERAL MUST SERVE AS AN INDEPENDENT AND IMPARTIAL ATTORNEY GENERAL FOR THE STATE. THE NEED TO MAINTAIN PUBLIC POPULARITY MIGHT ADVERSELY EFFECT THE QUALITY OF AN ATTORNEY GENERALS OPINION.

EOM

VIC:

COPIES OF JUDGE STEWARTS SPEECH WERE CIRCULATED TO SENATORS ABOUT 2 WEEKS AGO.

LEWIS SAYS THE ELECTED AG WAS DAVID'S ISSUE AND HE (LEWIS) DIDN'T DO ANYTHING ON IT AND WAS UNFAMILIAR WITH IT???? HE SAID HE HAD NOT PREPARED ARGUMENTS PRO OR CON BUT COULD MAYBE COME UP WITH SOMETHING IN A PINCH.

LET ME KNOW.....

/gb

* I've searched everywhere (around D2's and LS desk, through committee files, through clipping files etc.) and have not found any additional material on elected AG's or newsclippings I know were made, but are apparently missing).

HJR 7 SENATE JOURNAL - PAGE 482- 1 3/24/83

(CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7) ((JUD)) by the Judiciary Committee,

"Proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general and to procedures governing the election and term for state offices to be elected under the constitution."

was read the first time and referred to the State Affairs Committee and the Judiciary Committee.

HJR 7 SENATE JOURNAL - PAGE 932- 4 5/10/83

President Kerttula stated that (CS FOR SPONSOR SUBSTITUTE FOR) (HOUSE JOINT RESOLUTION NO. 7 (JUD)) (proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general and to procedures governing the election and term for state offices to be elected under the constitution) would have and additional referral to the Finance Committee.

HJR 7 SENATE JOURNAL - PAGE 933- 1 5/10/83

CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (JUD) was referred to the State Affairs Committee, the Judiciary Committee and the Finance Committee.

HJR 7 SENATE JOURNAL - PAGE 1134- 2 5/27/83

The State Affairs Committee considered (CS FOR SPONSOR SUBSTI-) (TUTE FOR HOUSE JOINT RESOLUTION NO. 7 (JUD)) (proposing amendments to the Constitution relating to the election of the attorney general). Senator Vic Fischer, Chairman, signed "do not pass". Senators Kelly, Sturgulewski and Ray signed "no recommendation".

The committee attached a new fiscal note prepared by Richard Pegues, Director, Administrative Services Division. "SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: *Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see analysis." Analysis appears in Senate Supplement No. 35 to today's journal.

CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (JUD) was referred to the Judiciary Committee.

HJR 7 SENATE JOURNAL - PAGE 1178- 2 6/ 2/83

The Judiciary Committee considered (CS FOR SPONSOR SUBSTITUTE) (FOR HOUSE JOINT RESOLUTION NO. 7 (JUD)) (proposing amendments to the Constitution of Alaska relating to the election of the attorney general) and a majority of the committee recommended "do not pass". The report was signed by Senator Ray, Chairman and concurred in by Senators Ziegler and Josephson. Senator Pettyjohn signed "do pass". Senator Eliason signed "no recommendation".

CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (JUD) was referred to the Finance Committee.

HJR 7 SENATE JOURNAL - PAGE 1315- 1 6/15/83

The Finance Committee considered (CS FOR SPONSOR SUBSTITUTE) (FOR HOUSE JOINT RESOLUTION NO. 7 (JUD)) (proposing amendment to the Constitution of Alaska relating to the election of the attorney general) and a majority of the committee recommended do not pass. Senator Bennett, Co-Chairman and Senators Ferguson and Fails signed "no recommendation". Senators Vic Fischer, Josephson, Mulcahy and Sackett signed "do not pass".

CS FOR SPONSOR SUBSTITUTE FOR HOUSE JOINT RESOLUTION NO. 7 (JUD) was referred to the Rules Committee.

~~714~~

VIC:

RE: FLOOR BRIEFING ON HJR 7 - elected attorney General

1. Senate State Affairs committee report: V.Fischer, do not pass, Kelly, Sturg, Ray - no rec.

2. Attached file includes:

   - pertinent backup, letters, and testimony you may want to quote.
   - each version of the bill
   - AG's reports
   - sectional analysis
   - fiscal notes
   - personal notes that may be appropriate .

3. Finance committee file included.

* [redacted]
CSSS HJR (JUD)

D2

HJR
7

ANALYSIS:

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

HJR
7

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation effecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

D2

JUN - 8 1983

June 3, 1983

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

Re: CSSS HJR 7 (JUD)
A.G. #366-566-83

Dear Senator Fischer:

I wanted to express my sincere thanks to you and your committee staff for the excellent hearing pertaining to the election of the Attorney General. I was particularly impressed with the testimony by Judge Thomas Stewart. I believe his arguments are persuasive.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:ml

03-C6LH

ALASKA STATE LEGISLATURE
SENATE STATE AFFAIRS COMMITTEE
SENATOR VIC FISCHER, CHAIRMAN
POUCH V, JUNEAU 99811
(907) 465-4954

May 26, 1983

Norman C. Gorsuch
Attorney General
Department of Law
Pouch K
Juneau, Alaska 99811

Re: HJR 7

Dear Attorney General Gorsuch:

Please prepare a fiscal note assessing the probable impact enactment of HJR 7 would have on state government.

If you have any questions please call me. Thank you.

Sincerely,

Vic

Senator Vic Fischer

VF:jf

CSSSHJR No. 7 (Judiciary)
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19		Travel	2,500	
	(1) Admin. Officer R17		Contractual	24,100	
	(1) Clk. Typist R8		Commod.-ongoing	5 00	
			Commod.-one-time	,.00	
			Equip.-one-time	18,100	
	(3)	113,805		54,600	168,405
Personnel					
	(1) Personnel Mgr. R21		Travel	2,500	
	Personnel Analysts R16		Contractual	54,200	
	( ) Training Officer R18		Commod.-ongoing	14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time	12,000	
	(1) Payroll Clerk R10		Equip.-one-time	24,100	
	(1) Clk. Typist R8				
	(8)	255,307		107,200	362,507
Property/Supply					
	(1) Materials Mgr. R21		Travel	2,500	
	(1) Purchasing Agent R18		Contractual	19,600	
	(1) Supply Officer R16		Commod.-ongoing	7,200	
	(1) Clk. Typist R8		Commod.-one-time	6,000	
			Equip.-one-time	19,300	
	(4)	161,843		54,600	216,443
Finance/Accounting					
	(1) Finance Officer R21		Travel	2,500	
	(1) Acct. Supervisor R16		Contractual	19,900	
	(1) Acct. Clerk R10		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	3,600	
	(3)	120,427		35,900	156,327

Attorney Timekeeping					
	(1) Accountant R18		Travel	1,800	
	(3) DP Clerks R11/R9		Contractual	33,000	
			Commod.-ongoing	7,200	
			Commod.-one-time	[illegible],000	
			Equip.-one-time	16,000	
	(4)	111,023		64,000	175,023
Records Management					
	(1) Records Analyst R18		Travel	1,800	
	(1) Records Supervisor R15		Contractual	81,200	
	(1) Records Handler R12		Commod.-ongoing	9,000	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
			Equip.-one-time	81,000	
	(5)	180,432		180,500	360,932
Data Processing/Communications					
	(1) DP Mgr. R21		Travel	2,500	
	(1) Programmer Analyst R18		Contractual	319,900	
	(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	41,600	
	(3)	142,116		373,900	516,016
Duplication Svcs.					
	(1) Duplication Mgr. R19		Travel	1,000	
	(1) Printing Tech. R17		Contractual	74,500	
	(2) Machine Operators R12		Commod.-ongoing	57,200	
			Commod.-one-time	6,000	
			Equip.-one-time	154,800	
	(4)	163,768		293,500	457,268
TOTAL	(34)	1,248,721		1,164,200	2,412,921

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/27/83

Date: 6/1/83

Mr. President:

The Committee on JUDICIARY has had CS SSHJR 7 (Jud)

Proposing amendments to the Constitution of Alaska relating to the election of the attorney general.

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 _____ [ ] 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

2 [signature]

3 [signature] no rec

MEMBERS HAVING OTHER RECOMMENDATIONS:

1 Ziegler - Do Not Pass

1 Boyle - Do Not Pass

1 Do Not Pass

Bill Ray
CHAIRMAN

COMMITTEE REPORT

SENATE

3/24/83

FURTHER: ~~JUDICIARY~~ Finance

Date: 5/26/83

Mr. President:

The Committee on STATE AFFAIRS has had CS SSHJR 7 (Jud)

Proposing amendments to the Constitution of Alaska relating to the election of the attorney general

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 _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [✓] Zero New Fiscal Note w/analysis

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Tim Kelly - No Rec
Lyman Stambaugh No Rec
Bill Ray No Rec

DO NOT PASS

CHAIRMAN

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SS HJR 7 Date on Bill: 2/11/83
Title: "proposing amendments to the Constitution..relating to the election of the attorney general"
Sponsor: Uehling, Ward et al
Requestor: House Judiciary Committee

1. Estimated fiscal impacts on: Office of the Governor, Division of Elections

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				-0-	-0-			
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: Implementation of this resolution would result in a Constitutional amendment question to be asked in the 1984 general election. As a single question on the ballot it would not incur a fiscal impact.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: TPThoma, Information Officer Phone: 4611
Division: Elections Date: 2/23/83

Approved by Commissioner: Date:
Department:

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7(Judiciary)
Title: "...election of the Attorney General."
Sponsor: House Judiciary (Orig.-Uehling)
Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law
Program Category Affected: General Govt.
BRU, Program of Subprogram(s) Affected: Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING			*	*	*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Richard I. Pegues, Director
Division: Administrative Services Division
Phone: 465-3672
Date: May 26, 1983

Approved by Commissioner: Richard I. Pegues /for/ Norman C. Gorsuch, Attorney General
Department: Department of Law
Date: May 26, 1983

Distribution:
Original to Legislative Finance
Copy to Office of Management and Budget (for Legislature introduced bills)
Copy to Department (for Governor introduced bills)
Copy to Sponsor
Copy to Requestor (if different from Sponsor)

3/8/83

CSSSHJR No. 7 (Judiciary)
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing; data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that determine a department's freedom of action.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19		Travel	2,500	
	(1) Admin. Officer R17		Contractual	24,100	
	(1) Clk. Typist R8		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	18,100	
	(3)	113,805		54,600	168,405
Personnel					
	(1) Personnel Mgr. R21		Travel	2,500	
	(2) Personnel Analysts R16		Contractual	54,200	
	(1) Training Officer R18		Commod.-ongoing	14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time	12,000	
	(1) Payroll Clerk R10		Equip.-one-time	24,100	
	(1) Clk. Typist R8				
	(8)	255,307		107,200	362,507
Property/Supply					
	(1) Materials Mgr. R21		Travel	2,500	
	(1) Purchasing Agent R18		Contractual	19,600	
	(1) Supply Officer R16		Commod.-ongoing	7,200	
	(1) Clk. Typist R8		Commod.-one-time	6,000	
			Equip.-one-time	19,300	
	(4)	161,843		54,600	216,443
Finance/Accounting					
	(1) Finance Officer R21		Travel	2,500	
	(1) Acct. Supervisor R16		Contractual	19,900	
	(1) Acct. Clerk R10		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	3,600	
	(3)	120,427		35,900	156,327

Attorney Timekeeping					
	(1) Accountant R18		Travel	1,800	
	(3) DP Clerks R11/R9		Contractual	33,000	
			Commod.-ongoing	7,200	
			Commod.-one-time	6,000	
			Equip.-one-time	16,000	
	(4)	111,023		64,000	175,023
Records Management					
	(1) Records Analyst R18		Travel	1,800	
	(1) Records Supervisor R15		Contractual	81,200	
	(1) Records Handler R12		Commod.-ongoing	9,000	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
			Equip.-one-time	81,000	
	(5)	180,432		180,500	360,932
Data Processing/Communications					
	(1) DP Mgr. R21		Travel	2,500	
	(1) Programmer Analyst R18		Contractual	319,900	
	(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
			Commod.-one-time	4,500	
			Equip.-one-time	41,600	
	(3)	142,116		373,900	516,016
Duplication Svcs.					
	(1) Duplication Mgr. R19		Travel	1,000	
	(1) Printing Tech. R17		Contractual	74,500	
	(2) Machine Operators R12		Commod.-ongoing	57,200	
			Commod.-one-time	6,000	
			Equip.-one-time	154,800	
	(4)	163,768		293,500	457,268
TOTAL	(34)	1,248,721		1,164,200	2,412,921

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $5,000 for personnel system printing, and $20,000 for a data processing program to maintain EEO statistics. Word processors will cost $14,500 each for a total cost of $48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling $75,000. Duplication equipment will cost approximately $150,000. DP terminals for both the DP section and the timekeeping section will cost $50,000. Data processing computer-time should be at $150,000 per year and an additional $150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of $2,412,921 is an enormous increase over the department's current administrative overhead of $449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be a proliferation of special counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1983 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.0 million annually, within just a few years.