SJR

10

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SJR 10

Revision Date:
Title: "Proposing Amendments to the Constitution ... relating to the election and duties of the attorney general."
Sponsor: Senators Green, Halford, Taylor
Requester: Senate Judiciary

Dept. Affected: Office of the Governor
BRU: Executive Operations
Component: Executive Office

COMPONENT SERIAL NO. 6

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	******
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						******
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	******

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME						3
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This analysis emulates the organizational structure of the states of Washington, Oregon and Arizona. Each of these states has an elected attorney general, and each Governor has on-staff counsel to respond to general legal questions, public policy issues, internal matters, open meeting laws, ethics laws, revocation of appointments, handle extraditions and petitions, prepare administrative orders, deeds relating to the state's natural resources, etc., and to carry-out the constitutional requirements of the Governor (i.e., executive clemency, messages to the Legislature, executive orders)

The contitutional amendment proposed by this resolution would be on the ballot in 1998. If approved by the voters, the first election of an attorney general would be with the next gubernatorial election in November, 2002. Fiscal impact to Office of the Governor would begin in FY03. The fiscal analysis is attached.

Prepared by: Michael A. Nizich, Administrative Director
Division: Administrative Services
Phone: 465-3876
Date: 2/25/97

Approved by Commissioner: Jim Ayers, Chief of Staff
Agency: Office of the Governor
Date:

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SJR 10 fiscal anaysis:

This fiscal impact in below is for **illustration purposes only** and is based on 1997 costs and salaries. The fiscal impact associated with an elected attorney general would not be realized until FY03, and accurate costs will need to be identified then. Additionally, if the voters approve the constitutional amendment calling for an elected attorney general, the functions and duties of the attorney general will need to be defined which may result in further fiscal impact.

This note assumes an increase in Governor's staff by three positions -- an attorney, rg. 26, a paralegal, rg. 19, and an executive secretary, rg. 14. Fiscal note further assumes existing state-owned office space would be available and does not include lease costs.

Personal services:	three PFTs	199.5
Contractual:	comm., phones, postage, tolls courier svcs., subscripts, etc.	18.6
Supplies:	office/library supplies	9.6
Equipment:	office furniture, DP and communication equipment	39.2 *
	Total first year costs:	266.9

* 39.2 first year set-up costs only and not required in subsequent years.

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date:
Title: "Proposing amendments to the Constitution of the St. of Alaska relating to the election and duties of the Attorney General"
Sponsor: Sen. Green
Requestor: (S) JUD

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 97) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill changes the Alaska Attorney General from an appointed to an elected position. Other than speculation regarding impact on prosecutorial discretion, there is no impact to the Public Defender Agency.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer Alison M. Elgee
Agency: Department of Administration
Date: 2/20/97

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FISCAL NOTE

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

Revision Date:
Title: "Proposing amendments to the Constitution . . . relating to the election and duties of the attorney general."
Sponsor: Senator Green
Requester: Senate Judiciary

Dept. Affected: Department of Law
BRU: Criminal Division/Civil Division
Component: All

COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES		376.3	752.5	752.5	752.5	851.4
TRAVEL		10.2	20.3	20.3	20.3	22.8
CONTRACTUAL		168.3	336.5	336.5	336.5	349.8
SUPPLIES		7.4	14.7	14.7	14.7	20.0
EQUIPMENT		65.0				26.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	627.0	1,124.0	1,124.0	1,124.0	1,270.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		303.0	596.0	596.0	596.0	742.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
1007 Other (Interagency Receipts)		324.0	528.0	528.0	528.0	528.0
TOTAL	0.0	627.0	1,124.0	1,124.0	1,124.0	1,270.0

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	10.0	10.0	10.0	10.0	14.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The greatest fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Phone: 465-5370
Date: 2/19/97

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 2/19/97

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ANALYSIS CONTINUATION:

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations" . The department is assuming that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and expends approximately $200.0 a year on contract outside counsel. The University has a legal staff of four attorneys. (The amount expended for University outside counsel could not be obtained in time. A revised fiscal note will be submitted when the amount is available.) The Department of Law could not absorb that caseload with existing resources. Since the Alaska Railroad Corporation is not funded with a state general fund appropriation, the department s assuming that if their legal functions were transferred to the Department of Law, they would be funded with interagency receipts from the ARRC, and the ARRC would in turn fund the reimbursable services agreement with railroad revenues. The university's legal services would be funded with general funds.

The full-time equivalent attorney cost estimates are based on the department's FY97 standard attorney cost schedule ($127,000), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, one-time equipment purchases, and expert witness costs are included separately. Since clerical support costs, except for one-time equipment purchases are included in the rate, only PFT position authorization and one-time equipment costs of $6.5 per legal secretary position would be required.

As an elected official, the attorney general would require assistance with constituent and press relations that existing resources would be unable to provide. A Special Assistant to the Commissioner II would be necessary for this purpose, beginning in mid-FY03.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit 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 on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The fiscal note costs include 2 PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10) positions to perform these functions.

A breakdown of all projected costs is attached.

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO.__ SSSJR 10

ANALYSIS CONTINUATION:

Another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they 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 a single special counsel, including secretarial assistance, total approximately $150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed $1,500,000 per fiscal year.

SS SJR 10 - Cost Analysis

General Legal Services

Beginning mid-FY99

3 FTE Attorneys (IV, III, III) for ARRC work + $5.0 each, direct case travel/contractual
1 FTE Legal Secretary I for ARRC work (equipment only)
$200 ARRC contract outside counsel/experts

100	322.5
200	8.7
300	258.5
400	6.3
500	26.0
	622.0 IAR (from ARRC revenues)

Beginning mid-FY99

4 FTE Attorneys for U of A work + $5.0 each, direct case costs
2 FTE Legal Secretary for U of A work (equipment only)
U of A contract work outside counsel/experts (amount unknown at time of fiscal note submittal)

100	430.0
200	11.6
300	78.0
400	8.4
500	39.0
	567.0 GF

Beginning mid-FY03

1 Special Assistant to the Attorney General II for constituent and press relations, R23A

100	78.3	/2	39.1
200	5.0	/2	2.5
300	8.6	/2	4.3
400	3.3	/2	1.7
500	6.5		6.5
	101.7		54.1 GF

Admin & Support

Beginning mid-FY03

2 Personnel Assistant I, R12A
1 Administrative Clerk III, R10A
Creation and maintenance of eligiblility lists, and records system maintenance.

100	119.5	/2	59.7
200	0.0	/2	0.0
300	18.0	/2	9.0
400	7.2	/2	3.6
500	19.5		19.5
	164.2		91.8 GF

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10 |

Revision Date
Title: Const. Amdt.: Election of an Attorney General
Sponsor: Senator Green, Halford, Taylor, Sharp
Requester: Senate Judiciary

Dept. Affected: Office of the Governor
BRU: Elective Operations
Component: General and Primary Elections
Component Serial No.: #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

Full-time		0				
Part-time		0				
Temporary		0				

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by: Dana LaTour
Division: Division of Elections
Phone: 465-5347
Date: 2/18/97

Approved by Co: Lt. Governor Fran Ulmer
Office of the Lieutenant Governor
Date: 2/18/97

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/10/97

FURTHER:

Date of 5-Day Notice: 2/6/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4-27-98

Judiciary Committee considered SS FOR SENATE JOINT RESOLUTION NO. 10

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

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Mike Miller	X	Leave		✓	
CHAIR: Robin L. Taylor	X	*CHAIR:*			

NEW FISCAL NOTE(S):

	Department	Date	Zero	Fiscal
#1	GOVERNOR/ELECTIVE OPS	4/[illegible]/97		✓
#3	LAW/CRIMINAL-CIVIL	4/24/97		✓
#3	ADMIN/PUBLIC DEFENDER	2/[illegible]/97	[illegible]	✓
	~~GOVERNOR/EXECUTIVE OPS~~	~~2/[illegible]/97~~	~~[illegible]~~	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

No. 1
Bill Version: S.S.SCR 10
(S) Publish Date: 4/28/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction)
Dept. Affected Office of the Governor
Title Const. Amend: Election of attorney general
BRU Elective Operations
Component General and Primary
Sponsor Senator Taylor
Requester Senate Judiciary Committee
Component Serial No #22

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual	3.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	3.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	3.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	3.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This figures includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by $56.0.

Prepared by Gail Fenumiai
Division Division of Elections
Phone 465-3935
Date 4/23/98

Approved by Lt. Governor Fran Ulmer
Agency Office of the Lieutenant Governor
Date 4/23/98

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(Rev 9/97) 98/inform ds/OMB

FISCAL NOTE

No. 2
Bill Version: SSSJR10
(S) Publish Date: 4/28/98

STATE OF ALASKA
1997 LEGISLATIVE SESSION

Revision Date: 4/17/97
Title: "Proposing amendments to the Constitution . . . relating to the election and the duties of the attorney general."
Sponsor: Senator Green
Requester: Senate Judiciary Committee

Dept. Affected: Department of Law
BRU: Criminal Division/Civil Division
Component: All
COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	*******	*******	*******	*******	*******
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	*******	*******	*******	*******	*******

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	*******	*******	*******	*******	*******
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The Department of Law cannot accurately quantify a fiscal impact from this resolution. However, it is clear that the impact on the state would be significant. In addition to the impacts on the Department of Law discussed below, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Phone: 465-5370
Date: 4/17/97

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 4/17/97

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CAL NOTE(S)

ANALYSIS CONTINUATION:

states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they 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 a single special counsel, including secretarial assistance, total approximately $150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed $1,500,000 per fiscal year.

The greatest potential fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately $200,000 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel varies year-to-year between approximately $500,000 and $1,500,000. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit 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 on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10)

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10
#2

ANALYSIS CONTINUATION:

position, at an estimated cost of $217,000 per year to perform these functions (using FY 98 salaries for illustration purposes).

As discussed in the narrative above, outside counsel costs for the University can vary widely and actual transfer of these legal service responsibilities to the Attorney General would require a more detailed analysis to identify specific costs and/or savings from the transfer. The following summarizes the potential fiscal impact to the Department of Law that we can identify at this time using the department's 1997 standard attorney cost schedule for a full-time equivalent attorney position, including standard overheads (clerical support, communications, space, supplies, data processing, etc.), and 1997 salaries and costs for non-cost schedule positions.

ARRC Legal Services Transfer (beginning mid-FY99)	
3 FTE Attorneys @ $127.0	$381.0
Direct case costs @ $5.0 per attorney	$15.0
1.5 PFT Legal Secretary position authorizations	$0.0
One-time equipment purchases for new positions @ $6.5	$32.5
Contract outside counsel/experts @ estimated $200.0	$200.0
	$628.5
University of Alaska Legal Services Transfer (beginning mid-FY99)	
4 FTE Attorneys @ $127.0	$508.0
Direct case costs @ $5.0 per attorney	$20.0
2 PFT Legal Secretary position authorizations	$0.0
One-time equipment purchases for new positions @ $6.5	$39.0
Contract outside counsel/experts @ estimated $500.0 to $1,500.0	$500.0
	$1,067.0
Administration & Support Personnel Classification System (beginning mid-FY03)	
2 Personnel Assistant I @ $49.6	$99.1
1 Administrative Clerk III @ $45.5	$45.5
One-time equipment purchases for new positions @ $6.5	$19.5
	$164.2
Total, Including One Time Equipment Purchases	$1,859.7
Less One-time items	($91.0)
Department of Law Estimated Minimum Annual Cost	$1,768.7

FISCAL NOTE

No. 3
Bill Version: SSSJR 10
(S) Publish Date: 4/28/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction)
Title: "Proposing amendments to the Constitution . . . relating to the election and duties of the attorney general."
Sponsor: Senator Green
Requester: Senate Judiciary

Dept. Affected: Department of Law
BRU: Civil Division/Admin & Support
Component: Transportation/New Component Administrative Services
Component Serial No.: 2214/Nxxx/2164

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	396.2	792.4	792.4	792.4	851.4	910.5
Travel	9.8	19.6	19.6	19.6	19.6	19.6
Contractual	672.5	1,344.9	1,344.9	1,344.9	1,353.9	1,362.9
Supplies	6.3	12.6	12.6	12.6	16.2	19.8
Equipment	65.0				19.5	
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1,149.8	2,169.5	2,169.5	2,169.5	2,260.6	2,312.8
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts	1,149.8	2,169.5	2,169.5	2,169.5	2,260.6	2,312.8
TOTAL	1,149.8	2,169.5	2,169.5	2,169.5	2,260.6	2,312.8

Estimate of any current year (FY98) cost:

POSITIONS

Full-time	9	9	9	9	12	12
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The greatest fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28(c). This language is broader than the language currently in AS 44.23.020

Prepared by: Joan M. Kasson — Phone: 465-5370
Division: Attorney General's Office — Date: 4/24/98
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 4/24/98
Agency: Department of Law

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(Rev 9/97) 98fnform.xls/OMB

ANALYSIS CONTINUATION

in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28(c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately $200.0 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel at approximately $1 million. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

This fiscal note assumes the same staff and contractual levels as those entities currently maintain. The full-time equivalent attorney cost estimates are based on the department's FY98/99 standard attorney cost schedule ($133,517), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses. Case specific travel, one-time equipment purchases, and expert witness and outside counsel costs are included separately. Clerical support costs, except for one-time equipment purchases, are included in the rate at an approximate ratio of one clerical support position for every three attorney positions. Position authorizations and one-time equipment costs of $6.5 per clerical position are required.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit 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 on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10) position, at an estimated cost of $162,800 per year to perform these functions (using FY 99 salaries for illustration purposes).

Although not included in this fiscal note, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they 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,

ANALYSIS CONTINUATION

representing the varying viewpoints of different agencies. Costs for a single special counsel, including secretarial assistance, total approximately $150,000 per year. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed $1,500,000 per fiscal year.

Cost Analysis

Civil Division BRU, Transportation Component

Beginning mid-FY99

3 FTE Attorneys for ARRC work + $5.0 each direct case costs (DCC)
1 FTE Legal Secretary for ARRC work (equipment only)
$200.0 ARRC contract outside counsel and experts (DCC)

	Per Position Cost	FTE	In-House	DCC	TOTAL
100	$113.2	x 3	$339.6		$339.6
200	$0.3	x 3	$0.9	$7.5	$8.4
300	$18.2	x 3	$54.6	$207.5	$262.1
400	$1.8	x 3	$5.4		$5.4
500	$6.5	x 4	$26.0		$26.0
Total ARRC	$140.0		$426.5	$215.0	$641.5

Civil Division BRU, New University Component

4 FTE Attorneys for U of A work + $5.0 each direct case costs
1.5 FTE Legal Secretary for U of A work (equipment only)
$1,000.0 U of A contract outside counsel and experts

	Per Position Cost	FTE	In-House	DCC	TOTAL
100	$113.2	x 4	$452.8		$452.8
200	$0.3	x 4	$1.2	$10.0	$11.2
300	$18.2	x 4	$72.8	$1,010.0	$1,082.8
400	$1.8	x 4	$7.2		$7.2
500	$6.5	x 6	$39.0		$39.0
Total U of A	$140.0		$573.0	$1,020.0	$1,593.0

Administration and Support BRU, Administrative Services Division Component

Beginning mid-FY03

2 Personnel Assistant I, Range 12A
1 Administrative Clerk III, Range 10A

	Per PA I Cost	FTE	PA I	AC III	TOTAL
100	$40.8	x 2	$81.7	$36.4	$118.1
200	$0.0	x 2	$0.0	$0.0	$0.0
300	$6.0	x 2	$12.0	$6.0	$18.0
400	$2.4	x 2	$4.8	$2.4	$7.2
500	$6.5	x 2	$13.0	$6.5	$19.5
Total	$55.7		$111.5	$51.3	$162.8

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date:
Title: "Proposing amendments to the Constitution of the St. of Alaska relating to the election and duties of the Attorney General"
Sponsor: Sen. Green
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

THIS BILL CHANGES THE ALASKA ATTORNEY GENERAL FROM AN APPOINTED TO AN ELECTED POSITION. OTHER THAN SPECULATION REGARDING IMPACT ON PROSECUTORIAL DISCRETION, THERE IS NO IMPACT TO THE PUBLIC DEFENDER AGENCY.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer Alison M. Elgee
Agency: Department of Administration
Date: 4/29/98

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. SSSJR 10 (JUD)

Revision Date:
Title: "Proposing amendments to the Constitution of the St. of Alaska relating to the election and duties of the Attorney General"
Sponsor: Sen. Green
Requestor: (S) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ( )	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

THIS BILL CHANGES THE ALASKA ATTORNEY GENERAL FROM AN APPOINTED TO AN ELECTED POSITION. OTHER THAN SPECULATION REGARDING IMPACT ON PROSECUTORIAL DISCRETION, THERE IS NO IMPACT TO THE PUBLIC DEFENDER AGENCY.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 4/29/98

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Rev: 04/98 jd

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/10/97

FURTHER:

Date of 5-Day Notice: 2/6/97
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4-27-98

Judiciary Committee considered SS FOR SENATE JOINT RESOLUTION NO. 10

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

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR#_____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Mike Miller	X	Leave		✓	
CHAIR: Robin Taylor	X	CHAIR:			

NEW FISCAL NOTE(S):

	Department	Date	Zero	Fiscal
#1	GOVERNOR/ELECTIVE OPS	4/28/98		✓
#2	LAW/CRIMINAL-CIVIL	4/24/98		✓
#3	ADMIN/PUBLIC DEFENDER	4/6/98		✓
#3	~~GOVERNOR/EXECUTIVE OPS~~	~~4/24/98~~	~~Zero~~	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

Revision Date: 4/17/97
Title: "Proposing amendments to the Constitution . . . relating to the election and the duties of the attorney general."
Sponsor: Senator Green
Requester: Senate Judiciary Committee

Dept. Affected: Department of Law
BRU: Criminal Division/Civil Division
Component: All

COMPONENT SERIAL NO. 2085-2092

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	*******	*******	*******	*******	*******
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	*******	*******	*******	*******	*******

Estimate of any current year (FY97) cost: $ 0.0

POSITIONS

FULL-TIME	0.0	*******	*******	*******	*******	*******
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SSSJR 10 proposes an amendment to the Constitution of the State of Alaska making the attorney general an elected office. Further, the proposed amendment describes the duties of the attorney general, and prohibits the governor from making a change in organization or function of a unit of the executive branch headed by the attorney general. Assuming this constitutional amendment were approved by the voters of the State of Alaska in the November 1998 general election, the first elected attorney general would take office in January 2003, FY 03. However, it appears that changes in the duties of the attorney general would take place upon passage of the amendment, as early as January 1999.

The Department of Law cannot accurately quantify a fiscal impact from this resolution. However, it is clear that the impact on the state would be significant. In addition to the impacts on the Department of Law discussed below, another major cost that may eventually occur as a result of changing from an appointed to an elected attorney general will be the proliferation of special counsel on the staffs of major departments. In other

Prepared by: Joan M. Kasson
Division: Administrative Services Division
Phone: 465-5370
Date: 4/17/97

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law
Date: 4/17/97

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ANALYSIS CONTINUATION:

states with elected attorneys general, agency counsel have been employed to give department heads a "second" opinion in controversial matters. These counsel usually do not have the authority to litigate, but they 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 a single special counsel, including secretarial assistance, total approximately $150,000 per year in 1997 dollars. Although it is highly speculative at this time to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, over time, it could easily exceed $1,500,000 per fiscal year.

The greatest potential fiscal impact on the Department of Law from the proposed constitutional amendment comes from expanded duties as described in Section 28 (c). This language is broader than the language currently in AS 44.23.020 in two ways. By inclusion of the language "state public corporation", the proposed amendment appears to include the Alaska Railroad Corporation and University of Alaska as entities that the attorney general shall defend in civil actions. Both of these organizations currently maintain their own counsel.

Secondly, Sec. 28 (c) requires the state "prosecute violations of State criminal law, including infractions and violations". The department assumes that the courts would continue to allow the attorney general broad discretion over the initiation, prosecution and disposition of cases, both civil and criminal. For example, under present law, district attorneys do not appear in court for most minor traffic violations. The charging police officer presents the state's case to the judge. If this language were to cause the court to rule otherwise, the expense to the state to have district attorneys appear in every case involving a minor infraction or violation would be substantial.

However, the department cannot make a similar assumption about the addition of state corporations to its workload. The Alaska Railroad Corporation (ARRC) has on staff three full time attorneys, and currently expends approximately $200,000 a year on contract outside counsel. The University has a legal staff of four attorneys, and estimates their annual expenditures on outside counsel varies year-to-year between approximately $500,000 and $1,500,000. Presumably, legal services could be provided to these agencies through reimbursable services agreements, and the Department of Law would require sufficient interagency receipt authority to take over these functions. Practically, whether there would be additional costs (or savings) in implementing such a transfer would require a more detailed analysis to determine.

In addition, the proposed amendment removes the governor's organizational and supervisory controls over any function or unit 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 on behalf of the governor.

It is anticipated that the Department of Law would continue to use centrally provided services such as accounting, purchasing, leasing and supply, professional services contracting, information management, and duplicating services on a "service bureau" basis and still maintain the attorney general's functions free from the governor's supervision. Personnel administration, however, is more problematic. To use the Department of Administration's classification system would retain an element of control by the governor over the Department of Law in terms of imposing functional changes in position descriptions and duties. The department assumes it would have to do its own classifications, create and maintain position eligibility lists, and maintain a more in-depth records system for personnel than it now does. The department estimates it would require 2 new PFT Personnel Assistant I (R12) positions, and 1 PFT Administrative Clerk III (R10)

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. SSSJR 10

ANALYSIS CONTINUATION:

position, at an estimated cost of $217,000 per year to perform these functions (using FY 98 salaries for illustration purposes).

As discussed in the narrative above, outside counsel costs for the University can vary widely and actual transfer of these legal service responsibilities to the Attorney General would require a more detailed analysis to identify specific costs and/or savings from the transfer. The following summarizes the potential fiscal impact to the Department of Law that we can identify at this time using the department's 1997 standard attorney cost schedule for a full-time equivalent attorney position, including standard overheads (clerical support, communications, space, supplies, data processing, etc.), and 1997 salaries and costs for non-cost schedule positions.

ARRC Legal Services Transfer (beginning mid-FY99)	
3 FTE Attorneys @ $127.0	$381.0
Direct case costs @ $5.0 per attorney	$15.0
1.5 PFT Legal Secretary position authorizations	$0.0
One-time equipment purchases for new positions @ $6.5	$32.5
Contract outside counsel/experts @ estimated $200.0	$200.0
	$628.5
University of Alaska Legal Services Transfer (beginning mid-FY99)	
4 FTE Attorneys @ $127.0	$508.0
Direct case costs @ $5.0 per attorney	$20.0
2 PFT Legal Secretary position authorizations	$0.0
One-time equipment purchases for new positions @ $6.5	$39.0
Contract outside counsel/experts @ estimated $500.0 to $1,500.0	$500.0
	$1,067.0
Administration & Support Personnel Classification System (beginning mid-FY03)	
2 Personnel Assistant I @ $49.6	$99.1
1 Administrative Clerk III @ $45.5	$45.5
One-time equipment purchases for new positions @ $6.5	$19.5
	$164.2
Total, Including One Time Equipment Purchases	$1,859.7
Less One-time items	($91.0)
Department of Law Estimated Minimum Annual Cost	$1,768.7

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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February 19, 1997

Honorable Robin Taylor
Senator
Alaska State Legislature
State Capitol Room 30
Juneau, Alaska 99801-1182

Re: SSSJR 10 - Proposing a constitutional amendment to elect the attorney general

Dear Senator Taylor:

I am sending this memorandum for the record to accompany my testimony on SSSJR 10 (proposing a constitutional amendment to elect the attorney general). I obtained a copy of the packet prepared by Senator Green, and believe that she and her staff should be complimented for the thorough research they have conducted of the past history of similar proposals in earlier legislatures.

In order in ensure that all of the debate at the constitutional convention is before the Judiciary Committee, I have attached a copy of the debate for the committee files. The debate includes discussion of whether to have elected officers other than the governor and lieutenant governor (then secretary of state), and specifically whether to elect an attorney general. Two strong points were made in favor of the concept of an appointed attorney general. The first point concerned the nature of the office of attorney general. Those in favor of an elected attorney general characterized the office as the "attorney for the people." In that connection, it was argued that the attorney general needed a franchise to office granted by the people rather than by the governor. This concept was strongly refuted by delegate McLaughlin when he said:

> 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. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's 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.

Minutes of the Alaska Constitution Convention at 2196.

The attorney general is the governor's chief legal advisor. In this capacity, he advises not only the executives, but the principal department heads and state agencies under the governor's supervision. By enjoying the confidence of the governor, the public interest is benefited by a consolidated law office that is both efficient and economical.

The second point made related to accountability of the government to the people. Convention delegates were prepared to make drastic changes from the diffused form of government provided through the Territory of Alaska. You will recall that many basic state responsibilities were under federal agency jurisdiction. The governor, collector of customs, adjutant general, U.S. marshal, judges, district attorneys, and other officials were federal appointees. To dilute the authority of these federally appointed officials, the territorial legislature provided for a number of locally elected officials including the attorney general, treasurer, highway engineer, and commissioner of labor. As a result of this fragmentation of authority, no single officer was accountable for the performance of government. The rationale for a minimum number of elected officials was expressed by Delegate Lundborg as follows:

> We in our committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the state's functions would be successful, we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election.

Minutes of the Constitutional Convention at 2217. I submit that these reasons have continued viability over 40 years after they were expressed.

I offer the following comments concerning specific provisions of the resolution:

(1) The Judiciary Committee should carefully consider sec. 2, which prohibits the governor from reorganizing the Office of the Attorney General. This would leave organization of the office entirely up to the attorney general and to a lesser degree, the legislature, which can influence organization by prescribing certain duties by law. This insulation of the attorney general may be desirable to preserve independence, but it may also create a wall between the governor and his lawyer that cannot be crossed. This could cause the governor to establish separate counsel within the Office of Governor and other principal departments.

(2) Section 5 of the resolution provides that the legislature may prescribe additional qualifications for the Office of the Attorney General. Proposed sec. 28(a). This provision is

exceedingly broad, and tends to hand to the legislature a power that is not given for other statewide officeholders. This provision needs some discussion in committee to develop the intent of the sponsor.

(3) Section 5 also contains a provision that will fundamentally alter the responsibilities of the attorney general. In proposed sec. 28(c), the attorney general is required to defend the state, state agencies, public corporations, or a state public enterprise. No mention is made of the power of the attorney general to bring suits on behalf of the state. This omission should be remedied. If the legislature fails to prescribe other non-litigation related duties for the attorney general, the office will devolve into an agency exclusively engaged in litigation on behalf of public agencies. This would be similar to the U.S. Department of Justice, which may have the unintended effect of hastening the establishment of agency counsel in the various principal departments who would be responsible for general advice to agencies not involving litigation.

(4) The resolution may have the unintended effect of expanding the powers of the attorney general concerning representation of public entities in civil matters. The list of entities to be represented by the elected attorney general mentioned in sec. 28 (c) could be interpreted to include state special service areas, and state chartered corporations not currently represented in litigation by the Office of the Attorney General. For example, the Alaska Railroad Corporation and the University of Alaska are typically represented by separate counsel.

(5) The requirement to defend violations of state criminal law including infractions and violations may have the unintended effect of shifting to the attorney general the burden of prosecuting motor vehicle, traffic and other minor offenses charged by municipal peace officers. This would have a significant fiscal effect on the budget of the Office of the Attorney General.

The department has prepared and will separately submit a fiscal note outlining the increased appropriations needed to implement the resolutions.

Thank -you for the opportunity to comment on the resolution.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: James L. Baldwin
James L. Baldwin
Assistant Attorney General

JLB:clh

1979

ALASKA CONSTITUTIONAL CONVENTION

January 13, 1956

FIFTY-SECOND DAY

been the function of all secretaries of state and that is the implication of the title. It is a broad general policy-making situation and also a program-arranging situation, and it is second in command to the governor. Now I think that you could either make that office as effective or as ineffective as the legislature and the governor desire it to be, but in the concept of the strong executive, we had the concept of a strong efficient second-in-command.

BUCKALL.W: One more question. Don't you feel that you would get a better secretary of state if the governor was allowed to appoint the secretary of state subject to approval by the senate?

V. RIVERS: Well, Mr. President, there we come back again to that problem of just how strong should a strong executive be. Theory and the ideal say that the strong executive should be a governor elected with the appointive power of all other officials. That has, we believed in the Committee or some of us did, there are exceptions, that that had a disadvantage in that there was no particular individual known to the people who had been exposed to the elective process being prepared to succeed to the governor, and we also felt that the people wanted an expression in the matter of just more than one individual as their elected representative. We also felt that an elected representative would make a better second-in-command in the absence or the death of the governor, that he would have then been elected by the popular will. So whether I believe or not that the lieutenant governor should be appointed -- personally, my stand was against just the one single elective head of government, the governor.

HELLENTHAL: I hesitate to talk on this because I think this is a wonderful enactment, and this is the only amendment that I have to offer to the entire matter, but I think it is basic. Now, therefore, I should like the indulgence of the delegates. Now, at the outset I favor a strong executive, never an absolute executive, and I don't think that the amendment would call for an absolute executive. I favor that the attorney general be appointed, that all other department heads be appointed, and I have no other amendment to offer. I do not intend to follow this up, to use this as a play to get the attorney general elected, no. I believe in a strong executive. Now, this proposed proposal has many implications. Mr. Buckalew used the word "deal" several times, and the political implications are not encouraging in this proposal.

PRESIDENT EGAN: Do you mean in this section?

HELLENTHAL: In the committee section, yes. I dispute the fact that the secretary of state would be elected by the people, which was stressed. It would not be exactly by the people. It would be a package deal. You would have to take him along with the governor, kind of a "buddy" system in the state, and the people would have nothing to do other than to elect their delegates at a caucus to the political convention, which would choose the "buddy", and I don't think that is very good. I don't think that is very good at all. Another point is this: It is a unique plan. Only one state in the entire United States seems to favor this system. Now, seven or eight, it is true, elect their secretary of state, but the "buddy" system is only found in one state. Now, why not just simply, and I don't think language is even necessary in the constitution, why don't we just let our governor hire someone to help him and fire him when he does not want him. Let him hire such other administrative assistants as he wants. What is wrong with that? It is conceivable that these pals might split up some time, that has happened before in politics, and go in different directions. Then where would we be? I don't particularly like this amendment, rather this section, and I don't think the alternative is despotism. I think that if we permit the governor to hire his assistants that we will secure

efficiency; we will eliminate a tendency towards a rather undesirable political scheming process, and I think that we will bring about much better government.

PRESIDENT EGAN: Is there anyone else who has not been heard who wishes to be heard? Mr. Harris.

HARRIS: Being on the Committee that helped devise this plan, that we are now working over, we took quite a few things into consideration before adopting this particular plan. In the first place, under our apportionment article, which we knew something of before we adopted this plan, there has to be some succession.

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NORDALE: Mr. President, I feel too that this should be given a little more thought, but I would like to say this: When we started, and I think the Committee members will agree with me, we were quite pleased with New Jersey because we felt it was a modern constitution and in New Jersey the governor is the only elected official. No other official is mentioned, I believe, except for perhaps a limitation on his being removed from office or something of that sort. But feeling that perhaps there were people in Alaska who felt that they wanted to elect the lieutenant governor or the succeeding officer, we introduced this idea of having two people who would run together, and so we devised this particular system to try to keep from weakening the governor and still please the people who might want to vote for his successor.

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NORDALE: Mr. President, I seem to be doing a lot of the talking. One of the reasons we called this particular official a secretary of state was that we did not want to have a lieutenant governor sitting and doing nothing. Now if you don't let the legislature prescribe something for him to do, he is going to be, in effect, a lieutenant governor, and the legislature could very well set up a department under somebody who is not called a secretary of state who would do all the work that a secretary of state normally does, and we would be right back with a lieutenant governor that most states are saddled with.

McLAUGHLIN: Mr. President, I'm in favor of Mr. Buckalew's motion to strike that on the theory that if we are going to have a strong executive, I believe that the executive should not be burdened with a crown prince who substantially would be dictated by the

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body that runs or supports the governor. Normally, that second-in-command is someone who is picked, not because of ability, but because of political considerations. He inevitably will come from a different part of the state, or

appeal to that class of voters which the candidate for governor does not appeal to. It's a history of the Vice Presidency, and I suspect it would be the history here. We would not have as a successor a strong secretary of state; he would make a poor governor largely because the consideration of his selection would be political. On the other hand, I believe that the governor has a right, after election, to appoint him; I also believe in conformity. I also believe that if we are going to have an elective governor that he should appoint every member of his cabinet, and that includes the attorney general. That is, you give him the power, if you vote for him and him alone, and not on the basis of the man who is supporting him, I believe that you will get an independent strong governor. And if you give him the power to appoint all of his cabinet, then in effect what you have done, you make him run on his record, but if we are going to talk about a strong executive and then dilute the thing by permitting every other cabinet member to run, you haven't got a strong executive at all, and apparently many of the decisions that we made here prior to this have been based upon the assumption that we should have a strong executive. I will vote for Mr. Buckalew's amendment on the theory that it will make the executive strong.

ALASKA CONSTITUTIONAL CONVENTION

January 14, 1956

FIFTY-THIRD DAY

it appeared that, at least the feeling was drawn out th (original copy illegible) whole proposal had almost been wrecked. I believe that (original copy illegible) tion can be changed so it will be acceptable and for tha (original copy illegible) I would like to have the reconsideration at this time with (original copy illegible) possible amendment afterwards if the section is retained.

PRESIDENT EGAN: Is there further discussion? Section 6 is now before us once more. Mr. Boswell.

BOSWELL: I would like to trace the evolution of this particular article through the Committee. Our first decision was, should we have a lieutenant governor? We decided that was a luxury which we could not afford in this new state. So our second decision was to try to set up a working successor to the governor, and it seemed a logical choice would be the secretary of state. Our third decision was regarding the election, whether this secretary of state should be elected or appointed, and we felt it would be a little more democratic,

more acceptable to the public, give them more to say, if he were elected. Then the question was, how can we elect a secretary of state and be certain he would be compatible with the governor and be of the same party as the governor. I asked Mr. Cooper this question on his previous amendment, how he could expect this elected secretary of state to be of the same party and he could not answer. I realized I was tossing him a curve at the time because we could not answer it; so that was why we came up with this particular section and we decided then that we could accomplish the purpose we were after by nominating the secretary of state and the governor separately and pairing them to run in the final election so that we would at least be certain that they would be of the same political party, and I think that is the important thing on it. It would be obvious to all that if we had a governor of one party and a secretary of state of another party that they could not only not work together, but there would be terrific confusion if that secretary of state ever succeeded to the governor. I think when the people of Alaska have this opportunity to nominate a secretary of state and realize the important position that he holds, they are going to be very careful of the man they nominate, and I don't think he will be the type of man that Mr. Buckalew would have us think he would be. Now if you think the Committee approach has been illogical or if you want to "buy a pig in a poke", support Mr. Buckalew's amendment. If not, I think the committee proposal has merit.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I seconded Mr. Buckalew's motion and I have always felt that Section 6, as worded for the reasons that we stated yesterday, injects an undesirable element in our constitutional government, and as far as a "pig in a poke", and I want to direct my remarks solely to that. There is an amendment on the desk

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which reads as follows: "That Section 6 be stricken and the following substituted: 'There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. He shall perform such duties as may be delegated to him by the governor. He shall

perform such administrative functions as are prescribed by law'." The amendment goes on and deletes the words "person elected" in line 12 of Section 7, and that is all there is to it. Now that amendment prescribes a constitutional secretary of state. The reason for that is so that the order of succession is preserved. It makes him an appointee of the governor, so the objection as to political faith is immediately removed. He will be of the same political party. It makes him a working secretary of state, because as far as executive duties are concerned the governor may delegate some to him. Administrative duties which of course do not infringe upon the executive may be prescribed by law. That avoids any conflict between a secretary of state working contrary to his governor, so this amendment preserves the order of succession exactly as it was in the original proposal, except only that the secretary of state is an appointive official, but the order of succession is preserved. Everything of the original proposal is preserved, and it is not "a pig in a poke". There are other equally, I think, desirable alternatives. There is no magic about this thing. It is very simple. In answer to Mr. Marston's statement, I am quite sure by 12 noon we will be all through with this thing. We could adopt many healthy proposals in that time, too, all of them better than the present Section 6. I have talked to other people who have equally sound alternative methods, none of which require huddles or delay, very simple, very clear and generally unobjectionable, so I say that if we do reconsider this matter, there are sound alternates and I do think though, that the present section or the section that was submitted to us must be improved.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it appears to me that the only difference between Mr. Hellenthal's proposal as he has talked about it here, and the committee proposal is the point as to whether the secretary of state is going to be elected or whether he is going to be appointed. I am afraid we are going to get ourselves in a box here if we vote on the motion to reconsider. I am afraid we may be foreclosing the possibility of considering Mr. Hellenthal's amendment. I am wondering if it might not be more orderly to hold the matter of the reconsideration until after we have heard Mr. Hellenthal's

amendment. I am afraid we will be in the same position we were in yesterday where we struck certain language and then we had to have an amendment to put the same language back in. As it now stands, we have stricken Section 6. If we take the motion to reconsider and if that

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motion to reconsider is against Mr. Buckalew's amendment, we will be in the position then of having failed to strike the section and then we have another motion come along to strike the section over again. It seems to me that the primary question at the minute is whether the body does or does not want an elective secretary of state.

PRESIDENT EGAN: Mr. Londborg.

LONGBORG: Mr. President, I would like to speak another word for the committee proposal as we drew it up. As I see the difference in the remarks now of Mr. Hellenthal and his would-be secretary of state, and the one that the Committee provided for, is this, of a time element as far as when the governor picks his partner. In other words, has the Committee made it possible that the governor would have a perfectly compatible working partner; he would choose that man or the party would work together and pick that man before the election, or if the law so provided, he may be picked in the primary to be the running partner of the successful nominee of the primary for governor. Now, as I see it, the pressure that is going to come upon the governor in selecting a secretary of state will be just the same as the pressure if he were to pick him before he was elected as governor. This man that will be selected as secretary of state after the governor is elected, will be a man who can take over the governor's office for a period of three or three and one-half years, maybe even more should the governor die. You can be sure there is going to be just as much pressure on the governor to attach on to him somebody the people don't want but somebody to whom the party owes a debt; but if you have the secretary of state as just a working man and not succeeding to the governor's chair, that would be a different thing, but if he is to fall in line for the governorship, then we stand the chance of having a person become governor for a period of one. two, three, three and one-half, and a day short of four years. The people would as

a whole perhaps reject just because of some pressures put upon the governor to put that man in as his secretary of state. I think the fair way to the people would be to have that man along with the governor on the general election ticket. Then if we don't feel that the governor chose wisely or the party chose wisely, they can both be rejected. The people have a choice. I can see that the strong executive would be one that would just pick all of his own men and those he doesn't want, he just throws away, but I think there are going to be pressures upon him in the selections, and that is one pressure that can be revealed before we take the whole "poke". We are going to know what we are getting and they can be accepted or rejected as a team.

becoming governor? For your information Mr. Rivers, I'll give you the names. Thomas Dewey, Alfred E. Smith, Herbert Lehman and Franklin Delano Roosevelt.

PRESIDENT EGAN: Mr. Armstrong, would you take the Chair?
(Mr. Armstrong took the chair at this time.)

EGAN: Mr. Chairman, I would like to say that I realize that the Committee on the Executive has put in a lot of days, a lot of hours, just simply a lot of time on this particular question. What they have come up with they feel is the best that is possible. I know that and give them every credit and I have respect for their feelings, but I have not been completely in favor of this type of provision at any time since it was under Committee discussion. I am opposed to having the man who would be next in line in succession to the governorship not actually elected in some manner by the people of the new state. I would like to say as to that that I also have that feeling with relation to the Vice Presidency of the United States, that I am not in agreement with that particular means that we now use and have used all along through our history in providing for the Vice President of the United States. This feeling does not conflict at all with my feeling

on the national level relative to that question. I feel that as Mr. Victor Rivers has stated, that if such an amendment -- I voted for the deletion of Section 6 -- with that feeling in mind, that actually a secretary of state won't be running for any office. The people won't have one thing to say about who shall be secretary of state under Section 6 as I read it. Someone will choose that particular man and he will become as Section 6 reads, "the governor of the State of Alaska." Now, if as Mr. Victor Rivers has stated, he will offer an amendment that will definitely guarantee to the people of Alaska that the man who will become secretary of state will be elected by the people in a primary election, then I would agree with going along with Section 6 if I knew that that particular amendment was going to be offered, and that we were going to have a chance to vote upon that. I also don't agree with the line of succession, with the secretary of state being appointed. I can see no reason why we should not have Section 6 as it is as well as accepting an amendment that would allow the governor to pick his own successor. I am not any more in agreement with that than I am with Section 6 as it is written now. In thinking this over, I am also not in agreement with having an amendment produced that will let the direct line of succession go from the governor, say in the manner that was suggested, that the secretary of state if the governor died, would call the legislators into session and then they would select the governor. I am not in agreement with that because the people do not elect the representatives to the legislatures and their senators with the idea that one of their number will become the governor of Alaska. I think that the best idea so

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far that I have heard is this particular proposal that we nominate, at least give the people some choice in the matter, it will be a real choice. Let them nominate the man who will run in the package with the candidates for governor in the general election. I think that that would be a proper means of allowing the people to elect their governor and also the successor to the governor. I would go along wholeheartedly with such a proposed amendment. That is my feeling on this question, and if I knew that that amendment was going to be adopted, I would then vote against the motion to strike Section 6 from the proposal.

Another thing is that the voters become apathetic as time goes on and pretty soon you
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have a small percentage of people electing your officials, whoever they may be. One reason I don't think we should be too fearful of the governor's making a bad appointment is that we are giving him the authority to make all the other appointments. The secretary of state is actually an administrative official, really. Normally he has a lot of administrative functions, just as our present Secretary of Alaska has. He does not have to necessarily have the qualities that would make him a good governor, although he should be in very close touch with the governor as he would be under our thinking here, so that in the event of an emergency the executive department would continue to run smoothly when the governor was absent. So there is a good deal to be said on both sides, and so it seems to me it does boil down to just one thing, do we want the people to elect this man or do we want him appointed?

GRAY: I'll speak once and forever more on this subject. To me, I feel that the Committee's plan is the best. We are talking about one thing, we are talking about the governor and his successor. The probability of a successor is possible but

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in general we can assume that the elected governor will carry out his term. There is a great deal of emphasis placed on the secretary of state becoming the governor. Now what we are talking about is efficiency in the state government, and we are selecting our man by the voice of the people and they are selected on a popularity basis with efficiency as a second regard. We try to get the most efficient man that is popular. In the Committee plan I do believe that you will receive the most efficient secretary of state, because if he is selected and if he is unpopular, it will be a detriment to the man running as governor. I believe like Mr. Nerland, I believe that in selecting a secretary of state we must select him for popularity but primarily for efficiency, which is the purpose of the whole executive department.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I support the Buckalew amendment and in turn the proposed amendment which Mr. Hellenthal is trying to submit. I feel that this issue is entirely a political issue within parties. I can see that under the particular system that we have here that we are just trying to pull a veil over the voters' eyes as to allowing them to elect a secretary of state because it ties them too closely to the governor. I could see that in a political convention that this Section 6, as written, would enable a party to set up a fairly strong piece of political machinery. I can't see where the primary election would do so good because we all know there are factions in political parties, and you know that from time to time in our past history we have had very strong feelings and splits in both major parties in Alaska, so I can see where we would have a strong man of one faction running for secretary of state and a strong man of the other faction running for governor, and if they were tied together

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in the general election it would not give you your Utopia of a strong executive. I feel that by appointing, that your governor-elect or your governor that becomes elected, would be more or less the leading figure of the political party that gained control of our government, and feel that to this end he should have the prerogative of choosing his own cabinet or major officials.

NORDALE: Mr. President, I think that Mr. Davis put his finger on the problem when he said it was a matter of do we want to elect a secretary of state or do we want to appoint him. I am not too sure just how strong my convictions are, but I would like to say this, that one of the problems that has faced most of the states, and I think one of the reasons why there has been a swing away from elected officials is that for one thing, as the years go by the ballots become cluttered with elected officials. Of course, ours does not look as if it would be in much danger, except we do have our election of senators, representatives, and at least three members of Congress to elect plus initiatives and referendum and all that sort of thing, but the swing toward the appointment of officials has been to keep some sort of coordination in government. Any man elected by the people is pretty independent, and that is why you have a lack of coordination in government where you have a lot of elected officials.

SWEENEY: I just wanted to say that I want to have a secretary of state elected. I want him compatible with the governor. I want him nominated in the primary and I want him teamed with the governor in the general election. That is all I want, and I do not believe that it is destroying the strong executive. To talk about splinters in either party, I think if you did happen to get one from one faction or one from another, it might be just the thing that would cement your party, and I hope you vote down the Buckalew amendment.

AWES: I have an amendment, Mr. President.

PRESIDENT EGAN: You may present your amendment, Miss Awes. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 18, page 2, strike the words 'secretary of state' and substitute 'lieutenant governor'; line 21, strike from 'and' through word 'governor' ending on line 2, page 3; line 2, page 3, strike 'secretary of state' and substitute 'lieutenant governor'; lines 4, and 5, page 3, strike words 'secretary of state' on both lines and in each case substitute 'lieutenant governor'."

AWES: I move the adoption of the amendment.

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PRESIDENT EGAN: Miss Awes moves the adoption of the proposed amendment.

BUCKALEW: I second the motion.

AWES: Some of the delegates here were perhaps surprised at the amendment thinking that the idea of a lieutenant governor had been completely buried. That is what bothered me. I am afraid that the idea of a lieutenant governor was buried perhaps too soon. The only argument I have heard is that the lieutenant governor does not play too important a role and it costs money; therefore we should do away with him. Yes, it does cost something to have a lieutenant governor; you have to pay him a salary; you have a few extra lines on the ballot; you have to provide an extra room in the statehouse. When you come down to it, it costs only a drop in the bucket for the total cost of running a state. Therefore, I think the question is not what does he cost, but does he serve a purpose? I think he would serve one very real purpose. I

agree we should elect a successor to the governor. I think Alaskans have been so fed up in the last 50 or 75 years with appointive governors that they don't want to hear the word again. However, it bothers me considerably to elect the secretary of state. I don't think we should put over what some people call a package deal and give the people the form of electing a secretary of state without the choice. On the other hand, to elect the secretary of state independently, we know there are not only different parties in Alaska but there is a lot of factionalism in the parties, and if you get a lieutenant governor who is of a different faction than the governor, because he isn't too effective while serving as lieutenant governor it would not make too much difference, but the secretary of state is right-hand man to the governor, and if you get a secretary of state who is of a different party or of a different faction in the same party, he can hamstring the governor and make our whole government ineffective for the whole four years he is in office, and I think the fact that we want a strong executive makes the problem even more pressing, and therefore I suggest that we consider or reconsider, as the case may be, the idea of having a lieutenant governor in the State of Alaska.

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

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McLAUGHLIN: I am a bit confused. Would the secretary read the section as it would read if it were amended.

PRESIDENT EGAN: Would the secretary read the section as it would read if it were amended.

CHIEF CLERK: "There shall be a lieutenant governor who shall have the same qualifications as the governor. He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor. The candidate for lieutenant governor who runs jointly with a successful candidate for governor shall be elected lieutenant governor. The lieutenant governor shall perform such duties

as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: Mr. Riley.

RILEY: I would like to address one question to Miss Awes. In distinguishing between the two titles did you mean to distinguish between duties in your discussion, Miss Awes?

AWES: Yes, I did. I was proposing a lieutenant governor in the traditional sense and then have the usual appointment of secretary of state by the governor to perform the duties of a secretary of state.

CHIEF CLERK: "There shall be a secretary of state who shall have the same qualifications as the governor. New material. "He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor and the procedure prescribed by law." Delete the word "election". "The procedure prescribed by law for general elections shall provide that the electors in casting their vote for governor shall also be deemed to be casting their vote for the candidate for secretary of state shown on the ballot as running jointly with the respective candidate for governor. The candidate for secretary of state who runs jointly with the successful candidate for governor shall be elected secretary of state. The secretary of state shall perform such duties as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: The Chair feels that the question that was asked by Mr. Kilcher was, are there any other necessary amendments to the following sections in order to make them conform completely with Section 6 as it is now written. Is that right?

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signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

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

BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

BARR: Mr. President, as this is rather a long amendment --

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semi-judiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be

sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.
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And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

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providing for the election of a commissioner of labor. If we yield ground 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. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. 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. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's 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. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he

would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that 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 faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: If there is no objection, the rules will be suspended and Mr. Barr may have the floor on personal privilege.

BARR: I want to explain that since it is very clearly the intention of this body to have two elected officials, there is no point in me introducing this other amendment and holding up proceedings. I never intend to hold up proceedings at all. I realize the shortness of time here, so I will not introduce that amendment at this time, although in my own heart, I believe that we should have an attorney general and commissioner of labor elected.

SUNDBORG: I would like to know if we are creating anywhere in this constitution the office of the attorney general? And I ask it because in our article on direct legislation there is a provision that petitions for referendum and recall and the like, shall be filed with the attorney general who shall certify it to its sufficiency as to form, etc. Since we have not created that office, and I don't believe we should do it by indirection by assigning duties to the man whose office has not been created, I would like to be recognized at the end of this statement under the item of personal privilege, to make a motion and the motion would be that the rules be suspended and the Committee on Style and Drafting be instructed to make a substantive amendment in the article on direct legislation to provide that wherever the words "attorney general" appear, that they be changed to "secretary of state". I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. It occurred to us in Style and Drafting that it would be entirely proper that the secretary of state should be the officer of the state with whom petitions under the initiative and under the referendum should be filed, that if he required legal services in order to satisfy himself that they were sufficient as to form, etc., he could get them from whatever officer of the state might be provided by

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legislation or otherwise for that purpose, but I think we are

probably being inconsistent and maybe we are making a mistake if we set up duties for an official called the "attorney general" and don't set up the office itself in the constitution.

ALASKA CONSTITUTIONAL CONVENTION

January 16, 1956

FIFTY-FIFTH DAY

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Are there copies available for the delegates? Is there a second to Mr. Rivers' motion?

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2216

HARRIS: I second the motion.

PRESIDENT EGAN: Mr. Harris seconds the motion. The matter is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, this matter of the office of attorney general came up for a good deal of discussion in connection with the strong executive and in connection with the matter of having some screening for the man who would be the attorney general. Some ofthe Committee felt that it would interfere with the strength of the executive. Others of the Committee felt they wanted to see the attorney general elective and not removable by the governor. It seemed that the only thing that was of main concern to a great many of us was that while we recognize the value of the strong executive, we are not naive enough to think that the governor who is elected will not have certain obligations, commitments, endorsements to meet when he goes into office. We realize that on all the other department heads there may have to be on his part some compromise with his desires under this plan as we have it. We did, however, want to try to eliminate any matter of the return favors or endorsements or obligations to

the man who he appointed as attorney general. We are trying to remove that particular office by a screening process we have set up here, so the man who went in there, his appointment would be based on merit and not on any other consideration. As you will note, we have recommended that the attorney general be screened by the Legislative Council in regard to his qualifications, that two or more be screened in accordance with the requirements to fill the job satisfactorily both on the basis of qualifications and on the basis of the governor's desires. The only intent in this is that the attorney general shall be one who is appointed not from the point of view of any obligations from the governor to him, and also the other intent is that the attorney general cannot be removed by the governor without also the approval of the legislature meeting jointly as they approved the appointment of the attorney general at the time he was actually put into office. He would be removed in the same manner, and by that manner only. There has been a good deal said here about diluting the power of the strong executive. I am of the opinion that perhaps a governor going into office where he had to make a large number of appointments, where he had been supported in his campaigns by many individuals who might be men of high degree of competence or average competence, I would be of an opinion that a governor in that position would probably welcome the possibility of the chance of appointing one office in such a manner that he would not have to repay any obligations or indebtedness or favors in that particular appointment. I for one feel the attorney general's office should have removed from it the need for making any concession to competence or qualifications because of political support on the part of the applicant to the governor in seeking election. That is my opinion and I feel there is sound justification for that opinion. I realize there are many divergent opinions here on that subject.

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2217

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

BUCKALEW: Mr. President, from the beginning I would like to state that I don't like this proposal. The first objection I see is that we are shoving off on the judicial council a function that is not one of their duties. The judicial

council was created by Mr. McLaughlin's department. He set up a judiciary. Now we are going to let Mr. McLaughlin's department select an attorney general. Not only does the attorney general have to be approved by the judicial council, the attorney general then has to be approved by the legislature. If the governor wants to remove him he has to get the consent of the legislature. Now, I don't think this matter would even have come up if we had not discovered that the initiative and referendum article referred to the attorney general. The reason I bring that up is that I think Mr. Sundborg had an excellent suggestion that we just insert the words "secretary of state". That is probably one of his functions. That is the only reason I think this business came up. We decided yesterday that we were not going to elect the attorney general. The argument put up by the Committee was they wanted to have a strong executive and today they are going to water it down a little. I think we ought to be consistent and vote this amendment down.

V. RIVERS: I rise to a point of order. I stated this matter had been discussed some time ago in Committee. It did not arise yesterday. This amendment was prepared during the time of that discussion. I also object to referring to any department of this constitution as being the department of some one individual. I don't believe it is either Mr. McLaughlin's or mine or anybody else's; it is the constitution of all the people of Alaska.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I was going to correct Mr. Buckalew, but since Mr. Rivers has already done so, I will only state that I would favor this amendment. We talked about this quite a bit in Committee, and it is a check on the governor. It makes a bit of difference when the attorney general's word becomes law. It actually is law, unless it is disputed in court and found to be not exactly as it is supposed to be, then it is used as law. Therefore, we feel the attorney general should be a qualified man and in order to insure that his qualifications are up to par we needed some type of screening process. Now, we did not screen the man because we wanted to connect him with the judicial department as Mr. Buckalew suggests. The only reason for using the judicial council we feel is that the

LONDBORG: Mr. President, as it has been mentioned, this is a minority report from the Committee, and I think it is only right you hear from some of the rest of the Committee regarding this. We in our Committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the

state's functions would be successful we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election. Mention has been made not only here on the floor but also the same argument in the Committee that the governor would have certain obligations and would be expected to lean toward that obligation in the appointing of an attorney general, but I can't help but feel that that same trend of thought would run right down through the other departments, and I believe that there are other departments under the governor that are of equal importance and if the governor is going to bow to party obligations or other obligations in selecting of the attorney general, he will do the same thing all the way through his other department heads, and we won't have a man in there that we can be fully proud of, and I think we are going to want to elect a governor who will be able to stand o his own two feet and appoint the men that he feels should be in the office. I think if he is that type of man he will not only be respected by one party but by all of the people of the state. As far as the removal is concerned, if we worry that the governor may remove the man at will, if that is not best, we can always insert that he be removed with the consent of the legislature, that is another matter, but as far as the appointing is concerned, I think that is vital right now. As far as screening is concerned, I can see that it might have been good in the past to have the nominations for attorney general screened some way before they even face election by the people. Be that as it may, I think if we elect a governor it is his duty to screen and select a good attorney general. That is part of his job. We are electing him to do that very thing, and if he fails to select a good attorney general then he is that much more a failure as a governor, and he will stand that test in the coming election. If we feel that the attorney general must be screened so that we have the best possible attorney general, I think it is also

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necessary that the head of the department of education, head of the department of welfare, health and labor, and all the other department heads be screened by somebody so that this governor gets the right men in his cabinet, so to speak. I certainly feel that he should be able to screen and select a good attorney general as well as select the other department

heads. But I think there is one thing that is even more important and we discussed that in the Committee, and that is the matter of compatibility. We have felt in the past that we have not had attorney generals who have been entirely in sympathy with the governor and it has been due to the way the two have gotten to their office. We elect the one and the other is appointed out of Washington, and we have seen certain cases where they have not worked out in harmony. Now, if the attorney general is to represent the people alone, then of course he should be elected, but as he is to work under the executive department we want a man who is compatible with the governor and with his type of program that he wants to put over in the state, one that understands the governor, one that will work with the governor and ask the judicial council as set up, not to honor party politics but to work in a nonpartisan capacity. Yet I feel they will not be able to do that as far as the attorney general is concerned, and I don't believe there is any more reason to feel that a judicial council nominee would be any more compatible than one elected by the people of the state; if they are going to ask the governor, "Will this man work with you or will that man work with you, do you want this one or that one?" You might as well say, "Let the governor pick the man in the first place." If they are going to have the liberty to put up a man that will not work with a governor, then we spoil our whole plan for an effective administration. I believe, as Mr. Ralph Rivers mentioned, if we want the attorney general's office mentioned at all in the constitution, it would be very simple on Section 16, line 14, after "department" to insert the words "including the attorney general's office." That would make it very clear that the governor would have the appointive powers and that the attorney general's office would be one that he would have direct control over. That gives you, I believe, some of the Committee thinking regarding the attorney general being appointed by the governor.

METCALF: I move that it be adopted and ask unanimous consent.

BUCKALEW: Objection.

DOOGAN: Point of order.

PRESIDENT EGAN: Objection is heard. Your point of order, Mr. Doogan.

KNIGHT: I second the motion.

DOOGAN: My point of order is that we have already considered this matter once, and I take exception to the remarks by the Chairman of the Legislative Committee in that this body by their action implied that the attorney general would not be one of those principal departments. I take exception for this

reason: that is, as it was so aptly pointed out by Mr. Davis, the thing they did not want to do was to set up the attorney general's office in the constitution but it could be set up as one of the principal departments.

PRESIDENT EGAN: As to the point of order raised by Mr. Doogan, we did consider spelling out that there be an attorney general once before in this section, did we not? Mr. Ralph Rivers.

R. RIVERS: I was about to offer an amendment so I got talked out of it, so it is the first time it has come up.

PRESIDENT EGAN: If this is the first time, the point of order would not be well taken at this time. Mr. Taylor.

TAYLOR: I was going to raise the same point of order as Mr. Doogan, but I think I am going to go even further because there was a specific amendment offered to provide for the establishment of an elected attorney general.

PRESIDENT EGAN: This does not say though, Mr. Taylor, that he would have to be an elected attorney general.

TAYLOR: Mr. Barr's motion to adopt an amendment to that effect would be.

PRESIDENT EGAN: But Mr. Metcalf's amendment does not include anything of that nature, so the amendment would be in order at this time, Mr. Taylor. Is there discussion of the proposed amendment as offered by Mr. Metcalf? Mr. Metcalf.

METCALF: I feel that mention of the attorney general's office should be made because we have mentioned it in the proposal under direct legislation, and in initiative and referendum, I think we mentioned it once or twice there. I am confused as to whether the senate is to ratify the nomination once every two years or once every four years. I am in a state of confusion

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and I would like to have this spelled out a little more as far as this important office is concerned. That's my feeling on

the matter.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: May I speak on this matter now. I don't believe that it is necessary to put an attorney general in there. If you do that you might as well put all the branches you are going to have, all the principal branches of the executive department in because it naturally falls into the category of one of the principal branches of the legislature, and I think we considered that the other day. It was felt that it was a legal department of the executive branch and should not be necessarily named because the governor would have the right under our present article to appoint the attorney general who sets up the legal department of the executive department, and I can't see whether if you add that attorney general on there including the attorney general, you had better put it including the highway department and all other things. I think we should leave it the way it is, and the other things will naturally follow and fall into the proper category.

SUNDBORG: I move that the rules be suspended and that the Committee on Style and Drafting be instructed to insert "secretary of state" at points in the article on initiative and referendum

where the words "attorney general" appears.

GRAY: I second the motion.

PRESIDENT EGAN: It has been moved and Mr. Gray seconds the motion that the word "secretary of state" be inserted in lieu of the words "attorney general" wherever they may appear in the article on initiative and referendum. Is there objection to that request?

TAYLOR: I object.

PRESIDENT EGAN: Objection is heard. Mr. Ralph Rivers.

R. RIVERS: I would like to back up the motion because I objected earlier in the day that we should have the attorney general draw the ballot heads and check the sufficiency of that proposed initiative bill, etc., but after I decided not to do anything about inserting "attorney general" in this section, it becomes necessary in the interest of consistency to say that those matters will be referred to the secretary of state who in turn can obtain the advice of the attorney general.

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

Senate Judiciary Committee

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

February 19, 1997

Mr. Tony Knowles
Governor of Alaska
State Capitol
Juneau, Alaska 99801

Dear Governor Knowles:

Yesterday, the Senate Judiciary Committee reviewed the sponsor substitute for SJR 10-- a resolution that calls for the election of the Attorney General.

As Chairman of the Judiciary Committee I think that it would be beneficial for committee members if you and/or Mr. Botelho attend the meeting scheduled to share your position on SSSJR10.

The Senate Judiciary Committee has scheduled a continuation of the hearing on SSSJR10 to be heard on February 26, 1997 in the Butrovich Room. In the interest of dealing with a concerned public, your testimony would be appreciated.

Sincerely,

Robin L. Taylor

Robin L. Taylor, Chairman
Senate Judiciary Committee

RLT/lc
cc: Mr. Bruce Botelho
Senate Judiciary Committee members

John G. Davies
ATTORNEY AT LAW

CENTURY PLAZA
1075 CHECK STREET, SUITE 202
WASILLA, ALASKA 99654

TELEPHONE (907) 373-6010
FAX (907) 373-6009

February 12, 1997

Senator Lyda Green
State Capitol
Juneau, AK 99811

Dear Lyda:

I agree wholeheartedly with your efforts to have an elected Attorney General. I also believe that we should elect our judges. As an attorney who has been involved in the system for almost twenty (20) years, I don't particularly agree with the way the judges are selected. It is essentially the good ole boy system in which the Alaska Judicial Council selects judges who are recommend for appointment by their peers. Such a system continues to support the appointment of liberal judges who may be academically well qualified, but completely out of touch with the way people want law and justice administered. It is obvious that today we have a resurgence of conservative ideals regarding family, home, law enforcement, and punishment. The conservative nature of our people is not reflected in the judiciary whatsoever. In fact, during the Hickel administration, Governor Hickel rejected appointees, but was faced with no better selection on the second go around. Simply put, it is unlikely that a conservative attorney would ever be put forth for an appointment to any judicial position.

When I taught law at the University of Alaska, Matanuska-Susitna College, I was shocked to learn by survey of my students that they were actually ultra conservative. Here we were at a University which is generally noted for liberal thinking teaching issues of criminal justice. Virtually every student agreed that the problem with the judicial system was the breakdown in the nuclear family and the inability of parents to enforce proper behavioral standards with their children. With the breakdown of the home, the lack of discipline was then passed onto society in general. The students were shocked to find the prisoners under the Cleary decision have constitutional rights while incarcerated insuring limitations on housing, certain types of meals, recreational facilities, libraries, and even Pell grants. Students learned that 'hose in jail got federal assistance to college

courses while they had to go to work and study at night. This infuriated my students, and their attitudes were definitely pro punishment with little empathy for rehabilitation. The only way to get the system changed is to elect judges and attorney generals. I support your efforts.

Very truly yours,

John G. Davies

JGD:bw

2/11/97

PALMER AK

RECEIVED

FEB 14 1997

Ans'd.....

DEAR SENATOR GREEN –

I BELIEVE ALL OF YOUR PROPOSED AMENDMENTS REGARDIND THE ELECTION OF THE ATTORNEY GENERAL ARE VERY GOOD. I'M SURE IF YOU CAN GET YOUR AMENDMENT BEFORE THE VOTERS IT WILL EASILY PASS.

LOOKING FORWARD TO THE FEB. 15 SENIOR ISSUES MEETING AT THE BOROUGH BLDG. ——

Jack R. Straayer

JACK STRAAYER
627 S. Gulkana St
Palmer AK 99645

SJR10

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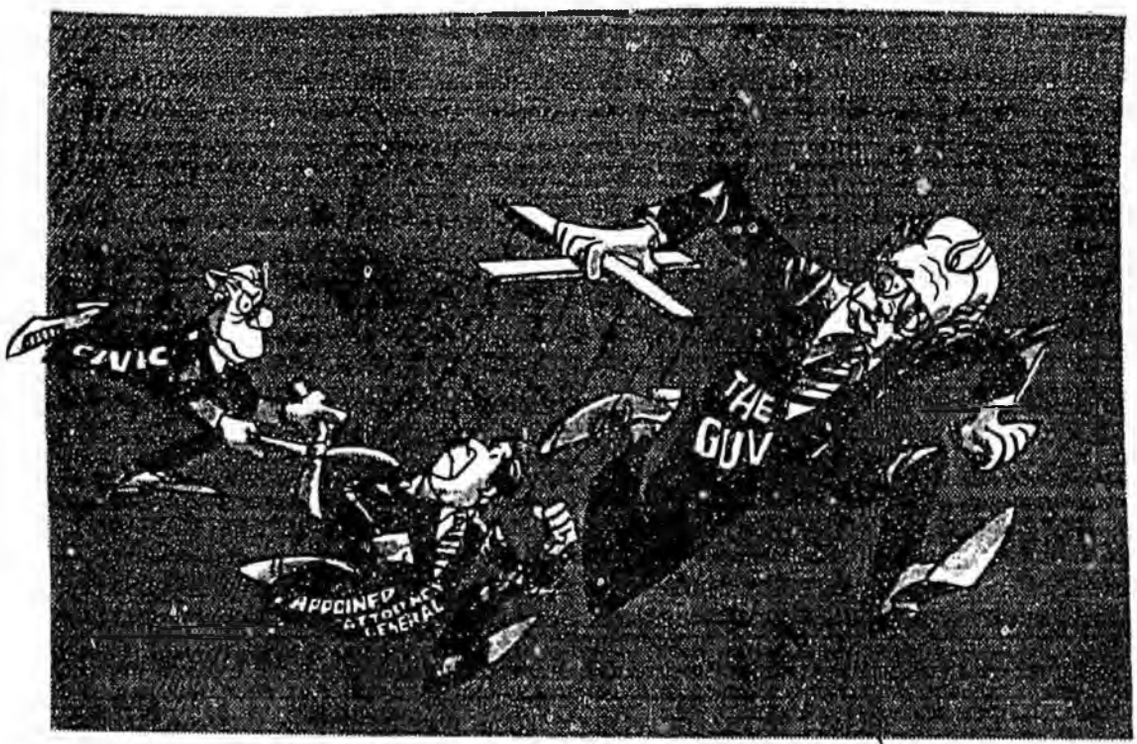
ALASKA FEVER



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.

Editorials

The people's attorney

IF YOU LOOK on the bright side, the prospect appears strong that the otherwise downbeat impeachment hearings now under way in Juneau will produce some positive results in relatively quick order.

One of the first things out of the box very likely will be action in the legislature next year to bring about the election of Alaska's attorney general — a post the governor now fills by appointment.

It's a constitutional amendment long overdue. In the 26 years since statehood was won, there have been many instances when the appointed attorney general system has failed to serve the people of Alaska. As the years went on, the attorney general has become virtually the private legal advisor to the governor who appointed him.

ON MANY OCCASIONS that presents an impossible conflict for the attorney general.

His boss, the governor, looks to him for a legal opinion, for example, to support some action the administration plans to take. From a public standpoint, there might be stronger arguments to be made on the other side of the issue. But the attorney general, beholden to the governor for his job, can be expected to deliver an opinion that might well have some legal basis but is not in the best interests of the state as a whole.

The move toward an elected attorney general has long been advocated in these columns. In fact, it may have been here that the campaign to get this modification to the constitution actually began a number of years ago.

SO WE HAIL the word from Senate President Don Bennett of Fairbanks that he has changed his mind on the elected attorney general concept and now wholeheartedly supports it. Said the senator:

"I used to think an appointed attorney general gave the executive branch better control and a better management tool. But I've changed my opinion over the past few months. I think we should have an attorney general who represents the people rather than somebody who represents the governor."

Editoria

Fox in the hen house

BUREAUCRATS AND politicians sometimes are successful in killing proposed legislation they don't like by attaching exorbitant fiscal notes to them.

It has come to our attention that the Department of Law, headed by the appointed attorney general, is using this tactic as a way to try to kill a Senate resolution calling for an elected attorney general.

The department has issued an analysis of the resolution, which, if approved by the legislature, would ask voters to decide if the constitution should be amended to mandate the selection of an attorney general at the ballot box.

The analysis says that the the change would cost the state more than $2.5 million a year.

It also details the many complexities of operating a voter-elected attorney general's office, right down to the amount of square footage that would be required for such an office and the cost per square foot.

THE VIEWS of the department aren't surprising. Traditionally, the attorney general, who is the department's top official, has opposed any changes in the current system, which makes the attorney general an appointee of the governor.

The governor is against the idea of an elected attorney general because it would eliminate his control of the state's top legal officer. Currently, with the governor as the A.G.'s boss, the governor generally gets legal opinions that support his positions. It's a cozy arrangement that serves the governor well, but it certainly doesn't serve the people of Alaska well.

The drawbacks of this arrangement are clearly apparent in the composition and content of the analysis of the pending legislation. It totally supports the governor's position. What else could be expected?

Thus, when the department says that an elected attorney general would cost the state more than $2.5 million annually, the information can be taken with a grain of salt.

TO HIS (or her) credit, the writer of this piece of propaganda has illuminated some of the problems that would have to be overcome in setting up an office for an independent attorney general. It won't be simple. Whoever held the office first would have to create it from the ground up (including the purchase of filing cabinets and installation of telephones).

And ways would have to be devised to do the purchasing of equipment and furniture and the hiring of personnel so that the functions wouldn't infringe on the independence of the office.

Moreover, there's a good chance a whole new bureaucracy would emerge in the form of a group of legal types hired to give in-house counsel. The Department of Law estimates this would cost the state as much as $1.5 million annually within just a few years.

There are many in Alaska who view such costs — both in dollars and extra effort — worthwhile. They should be given a chance to say so in the voting booth.

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

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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.

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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.

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.

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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.

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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.

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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.

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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.

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 crosswinds 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.

Editorials

What the people want

A PUBLIC OPINION poll has once more revealed that the people of Alaska want to elect the state's attorney general. In the eyes of the legislators, however, the people are like Rodney Dangerfield. They "don't get no respect."

Over and over again, the people have shown their preference for electing that high official. They have told legislators when they come home and ask what's on their constituents' minds. They have shown it consistently in letters to editors, speeches and every other chance they get.

Many candidates have found the elected attorney general issue a good plank for their platforms and have gone on record publicly as in favor. They have used the issue to make themselves attractive to voters.

THIS WEEK David Dittman is telling the results of his polling that showed Alaskans believe 3 to 1 that an elected attorney general would "more likely be fair and impartial" if he is elected instead of appointed by the governor.

That is one more expression that the legislators will probably ignore. The legislature, as a whole, simply can't muster whatever it takes to please the people in that regard.

To make the office elective, the legislature must propose a constitutional amendment. The voters would then be allowed to go on record formally and finally to make it so.

The issue, however, is one the politicians oppose. If the people could elect the attorney general they would have broken the united front of the political establishment in Juneau. The attorney general would become the people's representative instead of the governor's man.

This issue is one that will not go away even though the politicians want it to. They will have to confront it some day and it would be best that they do it soon.

IF THEY DON'T, it will continue to fester until it might lead to drastic action. The issue might be sufficient to build up support for calling a convention to revise the state constitution, an option that comes once each ten years without regard to the whims of politicians.

As it stands today, Alaskans are constantly noting developments that call for an aggressive, impartial and dedicated attorney general to defend the public interest from possible corruption and various shades of malfeasance.

The same Dittman poll that showed the overwhelming popularity of an elective attorney general also showed that 78 per cent of the people believe there has been serious dishonesty in the North Slope scandals. The appointed attorney general made fame by failing to show any concern at all when the scandal came to light.

The day will come when the people of Alaska will refuse to play the role of Rodney Dangerfield.

Anch. Times – Jan. 27, 1986

Up to the voters

THE STATE'S new attorney general, Hal Brown, has kept pretty much a low profile since taking office late last summer — and that's all to his credit. He came on board the governor's ship when it was sailing in troubled waters. By sticking to business and avoiding headlines he has helped the administration reach calmer waters as a re-election campaign nears.

But his special talents and temperament, which clearly were what Gov. Bill Sheffield needed after the turmoil of the August impeachment hearings, should not obscure the basic change needed to make the attorney general less a law clerk to the governor and more a servant of the people.

THAT CHANGE will only come with a constitutional amendment providing for the election of the attorney general. There is now before the legislature a resolution that could bring about this change.

From the legislators' standpoint, it should be no big deal. This is an issue they can pass right on to the voters, simply by approving its placement on the ballot at the next statewide election.

But there are hurdles to clear, not the least of which is an appropriate public hearing.

DEMOCRAT Pat Rodey of Anchorage, chairman of the Senate Judiciary Committee, will take care of that matter on Saturday with a hearing in Anchorage on a resolution sponsored by Republican Sen. Edna DeVries of Palmer to let the people vote on a constitutional amendment.

The message he gets at the hearing should be clear. Let the people decide. If they want an elected attorney general, they should have the right to make this change in government. If they don't, the proposition will fail at the polls.

Fair enough.

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.

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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.

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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.

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WILLIAM J. TOBIN
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FRED DICKEY
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age A-10 Sunday, March 29, 1981

Let the voters decid

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 s tem of having the attorn general appointed, rather th elected, has proved less th satisfactory.

We don't buy the argum of former Attorney Gene Norm Gorsuch that "le competence and electabl are not necessarily equa The statement is incomple The rest of it is that "le competence and appointa ity are not necessarily equ either."

IT'S QUITE POSSIB that an incompetent law might be elected attorney g eral. But his shortcomi would be readily evident : it's a sure thing that he wo serve only a single term.

It's also quite possible – fact, very likely — that sc extremely capable men women would seek electio the office, were it up to people to decide. An elec attorney general would be or her own person, with hi her reputation on the line. . he or she would be no lac to any governor, or any islature.

There's no doubt that w the office an elected posit it would be used by many stepping stone to higher o — the governorship, for ex ple, or a seat in the U.S. H or U.S. Senate. But wh wrong with that?

Rep. Fred Brown, the I banks Democrat who h the House Judiciary C mittee sponsoring this co tutional change, sees this means of strengthening ernment. So do we. Anc hope he prevails so that matter can be brought to ballot for a vote of the peo

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

August 22, 1985

MEMORANDUM

TO: Representative Terry Martin

FROM: Mark Torgerson MT
Legislative Analyst

RE: Election of Attorney General: Potential Additional Costs
Research Request 86-015

You asked that we investigate whether it costs more to have an elected attorney general or an appointed attorney general. As part of your request, you asked whether two departments of law are needed if the attorney general is elected by popular vote.

We contacted 12 states' attorneys general departments, the Alaska Department of Law and the National Association of Attorneys General.[1] Although they were unable to supply definitive financial figures, they provided the following information.

Summary

All those contacted agreed that the costs of operating an elected or appointed attorney general's department are dependent upon the structure and organization of the department that is established, and not on the nature of the selection process. For example, if the attorney general's department remains within the executive branch of government for administrative purposes--that is, purchasing, accounting, data processing and other administrative functions are performed centrally--the costs of administration should be comparable whether the position is elected or appointed. On the other hand, the establishment of an independent department, responsible for its own administrative functions, could require additional appropriations for administration. Based upon their departments' experiences, officials in other states (including elected and appointed departments) did not anticipate a

[1]The states contacted for this request include Delaware, Idaho, Maryland, Montana, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Virginia, Washington, and Wyoming.

significant increase in Alaska's attorney general's operating costs if Alaska changes to the popular election of the attorney general.

In addition, costs are dependent upon the legal responsibilities of the attorney general's department. For example, the attorneys general departments in four states--Alaska, Delaware, New Jersey, and Rhode Island--handle all civil and criminal prosecutions for violations of state laws. In the other states, attorneys general are responsible for civil litigation only, while independent county or district attorneys prosecute the criminal violations. Because the four states mentioned incur operating costs for criminal prosecutions, their budgets must be adjusted accordingly. In any event, the costs of operating an elected attorney general's department will depend largely upon the responsibilities assigned to the department.

Moreover, officials in other states and counsel for the National Association of Attorneys General said that two separate legal departments are not required if the attorney general is selected by popular vote. The attorney general--whether elected or appointed--is the chief legal adviser of the governor, and--in most states--legal adviser to the executive branch agencies. Although governors in the states contacted often retain one or more lawyers on their personal staff, or are statutorily authorized to hire a "general counsel" for independent legal advice, they rely on their attorney general for formal legal advice. If the governor disagrees with the attorney general on a legal issue, the governor is allowed to hire special counsel to represent him or her on the case. For example, Ron Rogers, Chief of the Division of Legal Counsel for the New Hampshire attorney general, stated that the governor there occasionally disagrees with advice given by the attorney general to an executive branch agency. When this occurs, the governor hires special counsel to represent him, while the attorney general represents the executive agency in the ensuing lawsuit. Mr. Rogers said that on some occasions, the attorney general will represent the governor, and the executive agency will retain special counsel. Although New Hampshire's attorney general is appointed by the state's governor, Mr. Rogers asserted that conflicts of this nature occur in either "elected" or "appointed" states, and that a separate legal department is not necessary to handle these matters.

Susan Hansen, Administrative Officer of the Montana Attorney General's Office, agreed with Mr. Rogers' assessment. In Montana, the attorney general is elected by popular vote. Ms. Hansen stated that although the governor there is authorized to retain one "legal counsel to the governor," the attorney general normally represents the governor on formal legal matters. On those rare occasions when the governor and the attorney general disagree on a legal issue and "go to court" to resolve the dispute, the governor's legal counsel represents the governor.

According to Ms. Hansen, Montana's governor and attorney general have enjoyed a good working relationship despite the fact that the attorney general is elected by popular vote. Officials in the other states contacted--both those with elected and those with appointed attorneys general--provided comparable assessments; significant disputes between the governor and attorney general have been uncommon.

Pennsylvania's Conversion to Popular Election of the Attorney General

Pennsylvania is one of 43 states where the attorney general is elected by popular vote.[2] It is the only state which has recently converted its selection process to the popular vote method, having done so when the state's voters approved an amendment to the constitution in 1978. The structure of Pennsylvania's legal services is unique among the states contacted. When the conversion occurred there, a legal division separate from the attorney general was created. This division, entitled the Office of General Counsel, is managed by an attorney (general counsel) appointed by the governor. The division includes attorneys who represent all executive branch agencies. (Prior to the conversion to the popular election process and the creation of the general counsel division, the agency attorneys were employed by the attorney general. These attorney positions were eliminated from the attorney general's staff after the conversion.) The general counsel and the agencies' attorneys provide initial "in-house" legal advice. However, if legally binding opinions are needed, they must be written by the Attorney General's office. In addition, the attorney general has primary responsibility to conduct all litigation. Nevertheless, the governor may instruct the general counsel to represent the executive branch when deemed necessary. Furthermore, the attorney general may delegate litigation responsibilities when doing so is believed to be in the best interests of the Commonwealth.

In the other states contacted which elect the attorney general, attorneys who represent the executive agencies are usually employed by the attorney general. In some states, such as Washington, the agencies are statutorily prohibited from hiring their own counsel without prior approval of the attorney general. According to Tim Malone of the Washington Attornry General's Office, the need for special counsel for the agencies is rare.

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[2]A breakdown of the selection process in all states is contained in House Research Request 81-91, which is attached to this memorandum.

Fiscal Note to Sentate Journal Resolution (SJR) 9

Attachment A is a fiscal note to SJR 9 "relating to the election of the attorney general." The note, which was prepared by the Alaska Department of Law's Division of Administrative Services, asserts that costs for administrative services could increase to approximately $2.5 million from the current $424,600 for FY 86. However, Richard Pegues, Director of the department's Division of Administrative Services, stated that these figures are "guesstimates" based upon the current language of SJR 9. Mr. Pegues stated that the division determined the note's figures under the assumption that an elected attorney general would be entirely independent of the executive branch and would require additional staff to handle functions now performed by the Office of Management and Budget and other executive branch divisions. Mr. Pegues stated that most of the staff positions represented in the fiscal note currently exist in divisions within the executive branch.

No state we contacted duplicates functions to the extent envisioned in the fiscal notes to SJR 9. Based on the activities of other states, it would be possible to provide for the election of the attorney general while retaining Alaska's current organizational structure, including centralized administrative services. The State could also choose from a number of alternative organizational structures, including the following:

- a structure comparable to that used in Pennsylvania, i.e., establish an office of General Counsel which includes executive agency attorneys who would be transferred from the attorney general's office; the elected attorney general would be responsible for all state litigation unless a conflict arises with the governor, or unless delegated; district attorneys could be elected by the communities or appointed by the attorney general, depending upon the option chosen by each community; or

- a structure which provides for the appointment of the attorney general (by the governor, the legislature or the supreme court) who could serves as counsel to the govenor and who would be responsible for civil litigation while elected state prosecutor would supervise all state criminal matters; district attorneys could be elected locally or be appointed, and could get tenure after working satisfactorily for a stated period.

Although these alternatives have been described superficially, they illustrate the variety of potential options for delivery of legal services in Alaska. According to David DeVries, Chief Deputy Attorney General in Pennsylvania, the change in that state's legal structure has not been a major problem; the crucial event is the legislative drafting of the implementing legislation. Mr. DeVries recommended drafting the legislation prior to the applicable election to increase voter awareness.

Attached with this request is a letter (Attachment B) concerning SJR 9 from Attorney General Gorsuch to Senator Rodey. According to Joe Geldhof of the Attorney General's Office, the Department of Law has no other Alaska studies on this issue.

I hope this information is useful to you. If you need additional information on attorneys general in other states, please contact our agency.

MT

Attachments

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR No. 9

Title: "...relating to the election of the attorney general."

Sponsor: Sen. DeVries

Requestor: Office of the Gov./OMB

Date of Request: April 22, 1985

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Gen. Govt., Admin. of Justice, Public Protection

BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING					*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND					*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME					*	*
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

* Because expenditures would not begin until the latter part of FY 89 1/, actual costs cannot be determined at this time. Please see the attached analysis.

1/ It is not clear from the resolution whether an incumbent or newly appointed attorney general, appointed prior to the first Monday in December, 1988, could assume independent status if a constitutional amendment conferring such status is approved in 1986.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 4/23/85

Approved by Commissioner: Norman C. Gorsuch Date: 4/23/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SJR No. 9 4/23/85
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 on behalf of the governor. 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. In an Executive Branch agency, a temporary clerk may not be hired without inter-departmental approval. Likewise, a single file cabinet may not be purchased, nor may a single telephone line be ordered without such approval.

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.

Additional costs, expressed in FY 85 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 would determine an independent department's freedom of action.

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 33 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, $25,000 for personnel system printing. Word processors will cost $14,500 each for a total cost of $72,500. Records management equipment include storage devices and microfilm/graphics equipment totalling $95,000. Duplication equipment will cost approximately $170,000. DP costs will probably total about $150,000 for computing time and storage and about $150,000 for existing systems program maintenance.

The total additional cost of $2,554,937 is an enormous increase over the department's current administrative overhead of $424,600 projected for FY 86. It is, however, part of the price that will probably have to be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1986 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 the proliferation of special counsel on the staffs 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 1985 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 $1.5 million annually, within just a few years.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19	51,365.	Travel	2,500.	
	(1) Admin. Officer R17	44,923.	Contractual	24,100	
	(1) Clk. Typist R8	27,143.	Commod.-ongoing	5,400.	
			Commod.-one-time	4,500.	
			Equip.-one-time	18,100.	
	(3)	123,431.		54,600.	178,031.
Personnel					
	(1) Personnel Mgr. R21	58,195.	Travel	10,000.	
	(2) Personnel Analysts R16	42,103. X 2	Contractual	54,200.	
	(1) Training Officer R18	48,107.	Commod.-ongoing	14,400.	
	(2) Personnel Tech.'s R12	33,820. X 2	Commod.-one-time	12,000.	
	(1) Payroll Clerk R10	30,284.	Equip.-one-time	24,100.	
	(1) Clk. Typist R8	27,143.			
	(8)	315,575.		114,700.	430,275.
Property/Supply					
	(1) Materials Mgr. R21	58,195.	Travel	7,500.	
	(1) Purchasing Agent R18	48,107.	Contractual	19,600.	
	(1) Supply Officer R16	42,103.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R8	27,143	Commod.-one-time	6,000.	
			Equip.-one-time	19,300.	
	(4)	175,548.		59,600.	235,148.
Finance/Accounting					
	(1) Finance Officer R21	58,195.	Travel	5,000.	
	(1) Acct. Supervisor R16	42,103.	Contractual	33,100.	
	(2) Acct. Clerk R10	30,284. X 2	Commod.-ongoing	9,000.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	7,500.	
			Equip.-one-time	15,700.	
	(5)	188,009.		70,300.	258,309.

Records Management					
	(1) Records Analyst R18	48,107.	Travel	1,800.	
	(1) Records Supervisor R15	39,415.	Contractual	81,200.	
	(1) Records Handler R12	33,820.	Commod.-ongoing	9,000.	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500.	
		30,284./37,005.	Equip.-one-time	105,000.	
	(5)	188,631.		204,500.	393,131.
Data Processing/Communications					
	(1) DP Mgr. R23	65,742.	Travel	7,500.	
	(1) Programmer Analyst R17	44,923.	Contractual	319,900.	
	(1) DP/Comm. Sys. Supvr.R18	48,107.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	6,000.	
			Equip.-one-time	56,100.	
	(4)	185,915.		396,700.	582,615.
Duplication Svcs.					
	(1) Duplication Mgr. R19	51,365.	Travel	1,000.	
	(1) Printing Tech. R17	44,923.	Contractual	74,500.	
	(2) Machine Operators R12	33,820. X 2	Commod.-ongoing	57,200.	
			Commod.-one-time	6,000.	
			Equip.-one-time	174,800.	
	(4)	163,928.		313,500.	477,428.
TOTAL	(33)	1,341,037.		1,213,900.	2,554,937.

BILL SHEFFIELD, G

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 22, 1985

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Elected AG
SJR 9

Dear Senator Rodey:

I would like to comment on the merits of the question of whether or not we should elect the attorney general.

As you take up this issue, it is useful to consider how this proposed change will effect the citizens of our State in both the short and long term. 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 the election of some or all other commissioners.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, the Attorney General 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 serve at the pleasure of the President with the advice and consent of the Senate. 1/

1/ Our research indicates that the Attorney General is popularly elected in forty-three states. The Attorney General is appointed by the Governor in five states (New Hampshire, Alaska, Hawaii, New Jersey and Wyoming), three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is a "constitutional officer" selected by the Legislature while Tennessee's Attorney General is selected every eight years by the Supreme Court of that state.

I have a number of substantive points which weigh against the election of the attorney general. First, in Alaska, the people, through their legislators do participate in the selection of the attorney general by the confirmation process. In addition, the confirmation process allows the Legislature to examine the qualifications and integrity of the nominee.

Secondly, 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. The delegates to our Constitutional Convention recognized over a quarter century ago that, in our vast state with its disparate interests and citizens, the administration of state government requires a strong governor. This still holds true today. 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 administrative officials can lead to a less responsive state bureaucracy and a diffused accountability of the executive branch 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. 2/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but that 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

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

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.

Thirdly, in addition to the practical problems caused by an elected attorney general, experience in other states with an elected attorney general suggests that the Governor's office will incur substantial costs with respect to the use of separate and additional counsel for the Governor. 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 Governor's 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 counsel, 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. 3/

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 extra cost incurred by the Governor's office to hire and use legal counsel 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 legal bureaucracy.

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

Fourthly, in states where the attorney general is elected, the heads of executive departments often hire their own attorneys. In jurisdictions with elected attorneys general, there is often a proliferation of house 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. Without centralized legal service and advice, each agency will rely on advice from its own lawyers. Therefore, agencies will receive differing interpretations as they raise legal issues. This in turn will make consensus among different agencies on issues more difficult to achieve. The result is that public policy decisions in the executive branch will be delayed to the detriment of the public and the legislature. In addition, these house counsel frequently submit amicus briefs in litigation affecting their department's programs. It is not unusual in states with an elected attorney general to see four or five separate briefs filed in a single matter, representing the varying viewpoints of different agencies, in addition to the attorney general's brief. If nothing else, this needless duplication insures that the courts and the public will be confused about state policy on many issues.

In my estimation, the cost for such additional counsel in Alaska could easily exceed $1.0 million annually, within a few years. This cost is simply not warranted by any rational criteria and should be further questioned in light of diminishing revenues. We have many more basic needs in Alaska which command the state government's immediate attention. Surely we do not want a needless layer of extra lawyers embedded in state agencies.

In summary, it is my opinion that electing the Attorney General will split administrative responsibility and executive authority, diffuse the political accountability of the executive branch to the public, add more attorneys to state government, contribute to more intense bureaucratic infighting among agencies, delay the resolution of executive branch policy decisions, and create a higher rate of growth in the state operating budget.

Please call upon me at your earliest convenience if I can provide additional information on this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 27, 1981

MEMORANDUM

TO: Representative Fred Brown, Chairman
House Judiciary Committee

ATTN: Pete Froehlich

FROM: Deb Pomeroy DCP

RE: Election or Appointment of Attorneys General in Other States
Research Request 81-91

You asked the we provide a breakdown of the 50 states showing which states elected their attorneys general, and which states appointed them.

According to the 1980-81 edition of Book of States (see attached table), 40 states have a constitutional provision requiring the public election of the attorney general. These states are listed below:

Alabama	Illinois	Missouri	Pennsylvania
Arizona	Iowa	Montana	Rhode Island
Arkansas	Kansas	Nebraska	South Carolina
California	Kentucky	Nevada	South Dakota
Colorado	Louisianna	New Mexico	Texas
Connecticut	Maryland	New York	Utah
Delaware	Massachusetts	North Carolina	Virginia
Florida	Michigan	North Dakota	Washington
Georgia	Minnesota	Ohio	West Virginia
Idaho	Mississippi	Oklahoma	Wisconsin

of these States what procedures were used to change from the constitution

Three states, Indiana, Oregon and Vermont, have a statutory requirement that the attorney general be elected by the public.

Of the states that have appointed attorneys general, Hawaii, Wyoming and New Jersey require Senate approval of the Governor's appointment; New Hampshire requires Council approval; and, Alaska requires approval by both the House of Representatives and Senate.

The remaining two states have a different requirement than public election or appointment by the Governor: Maine has a constitutional provision that the attorney general be elected by the legislature; and Tennessee requires, by statute, that the attorney general be elected by the state Supreme Court.

dp

Attachment

Table 18
STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION*

State or other jurisdiction	Governor	Lieutenant Governor	Secretary of state	Attorney General	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget	Civil rights	Comptroller	Community affairs	Consumer affairs	Corrections	Data processing
Alabama	CE	CE	CE	CE	CE	G	...	CE	G	GS	...	...	...	(a-1)	B	CS
Alaska	CE	CE	(a-3)	GB	G	GB	A	A	A	A	G	GB	GB	A	A	A
Arizona	CE	...	CE	CE	CE	G	GS	B	GS	L	G	G	...	A	GS	AG
Arkansas	CE	CE	CE	CE	CE	G	(b)	(a-9)	AG	AG	G	GS	G	(a-1)	GS	GS
California	CE	CE	CE	CE	CE	GS	(b)	G	GS	GS	...	G	GS	G	GS	G
Colorado	CE	CE	CE	CE	CE	G	GS	GS	A	(a-6)	A	A	...	(a-1)	GS	(a-7)
Connecticut	CE	CE	CE	CE	CE	G	GE	GE	GB	A	B	GE	(a-9)	GE	GE	A
Delaware	CE	CE	GS	CE	CE	GS	AD	GS	GS	GS	GS	AG	GS	AG	GS	A
Florida	CE	CE	CE	CE	CE	GS	GS	CE	CE	A	...	GS	GS	GC	GS	A
Georgia	CE	CE	CE	CE	...	G	GS	CE	GS	G	...	B	B	G	B	(a-7)
Hawaii	CE	CE	(a-3)	GS	...	GS	...	GS	(g)	GS	...	(a-4)	...	GS	(a-2)	CS
Idaho	CE	CE	CE	CE	CE	G	GS	GS	GS	G	B	G	(a-16)	(a-1)	B	(a-22)
Illinois	CE	CE	CE	CE	CE	G	GS	GS	(g)	G	(a-1)	GS	GS	(a-1)	GS	(a-7)
Indiana	CE	CE	CE	SE	CE	G	G	(a-3)	G	G	G	(a-3)	...	G	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	L	GS	GS	(a-4)	(a-1)	GB	CS
Kansas	CE	CE	CE	CE	SE	GS	GS	B	GS	L	B	GS	...	A	GS	A
Kentucky	CE	CE	CE	CE	CE	G	G	CE	G	AG	B	G	G	A	AG	AG
Louisiana	CE	CE	CE	CE	CE	GS	G	CE	GS	L	...	GS	GS	GS	GS	A
Maine	CE	...	CL	CL	CL	G	GLS	GLS	ALS	AG	B	(a-23)	G	ALS	AG	CS
Maryland	CE	CE	GS	CE	CL	GS	...	GS	AGS	GS	G	A	AG	A	AGS	...
Massachusetts	CE	CE	CE	CE	CE	G	G	G	G	AG	A	A	G	G	G	A
Michigan	CE	CE	CE	CE	GS	G	GS	B	GS	L	B	GS	...	A	B	CS
Minnesota	CE	CE	CE	CE	CE	G	GS	GS	BS	GS	GS	(a)	GS	GS	GS	A
Mississippi	CE	CE	CE	CE	CE	G	...	SE	G	B	...	(a-24)	B	A	B	B
Missouri	CE	CE	CE	CE	CE	GS	GS	GS	AS	A	B	B	(a-9)	(b)	A	A
Montana	CE	CE	CE	CE	A	G	GS	GS	G	G	G	G	GS	G	A	A
Nebraska	CE	CE	CE	CE	CE	G	GS	GS	GS	A	B	GS	G	A	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	B	A	(a-7)	G	G	G(c)	A	B	A
New Hampshire	CE	...	CL	GC	CL	GC	GC	GC	GC	(a-7)	B	GOC	GOC	(a-1)	GOC	B
New Jersey	CE	...	GS	GS	GS	GS	...	BG	GS	GS	A	A	GS	GS	GS	A
New Mexico	CE	CE	CE	CE	CE	GS	GS	(b)	GS	G	G	GS	AG	(a-1)	A	(b)
New York	CE	CE	GS	CE	(j)	G	...	GS	G	G	G	GS	GS	GS	GS	GS
North Carolina	CE	CE	CE	CE	CE	G	G	CE	BG	AG	G	G	A	A	G	AG
North Dakota	CE	CE	CE	CE	CE	G	(g)	CE	GS	A	...	G	A	A	GS	A
Ohio	CE	CE	CE	CE	CE	G	GS	GS	A	GS	GS	GS	GS	A	GS	A
Oklahoma	CE	CE	GS	CE	CE	GS	...	GS	GS	G	B	G	G	B	B	A
Oregon	CE	...	CE	SE	CE	G	GS	GS	AG	A	CS	GS	A	A	AG	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G	GS	GS	GS	A	A	G
Rhode Island	CE	CE	CE	CE	CE	G	GS	GS	G	GS	B	GS	GS	BS	G	A
South Carolina	CE	CE	CE	CE	CE	CE	(a-16)	SE	B	B	B	GS	A	B	B	B
South Dakota	CE	CE	CE	CE	CE	GS	G	GS	A	G	GS	GS	CS	(a-1)	AG	A
Tennessee	CE	(o)	CL	SC	CL	G	G	G	G	A	B	G	(a-9)	A	G	A
Texas	CE	CE	GS	CE	CE	GS	...	SE	B	G	...	B	GS	A	B	A
Utah	CE	SE(k)	GE(k)	CE	CE	G	...	GS	GS	GS	...	GS	...	A	BA	GS
Vermont	CE	CE	CE	SE	CE	SL	GS	GS	GS	GS	(a-1)	A	GS	(a-1)	GS	CS
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB	...	GB	A	(a-24)	GB	GB
Washington	CE	CE	CE	CE	CE	G	GS	GS	A	GS	B	GS	(a-6)	(a-1)	A	B
West Virginia	CE	...	CE	CE	CE	GS	GS	CE	GS	A	GS	GS	A	(a-1)	GS	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	B	GS	CS	A	(d)	GS	(b)	A	CS
Wyoming	CE	...	CE	GS	CE	G	G	B	G	G	...	...	A	A	BG	A
Guam	CE	CE	...	GS	A	...	GS	GS	A	GS	...	GS	G	A	GS	G
Puerto Rico	CE	...	GB	GS	GS	GS	...	GS	(a-17)	G	G	G	A	GS	GS	...

*Salary information for the officials listed in this table can be found in Table 17.

Legend:

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

	Appointed by	Approved by
G	—Governor	...
...	—Governor	Senate
...	—Governor	Both houses
...	—Governor	Either house
...	—Governor	Council
...	—Governor	Departmental board
...	—Governor	Appropriate legislative committee and senate

	Appointed by	Approved by
GOC	—Governor and council or cabinet	...
LG	—Lieutenant governor	...
AT	—Attorney general	...
A	—Agency head	...
AB	—Agency head	Board
AG	—Agency head	Governor
AGC	—Agency head	Governor and council
AS	—Agency head	Senate
ALS	—Agency head	Appropriate legislative committee and senate
AGS	—Agency head	Governor and senate
ASH	—Agency head	Senate president and house speaker
B	—Board or commission	...
BG	—Board	Governor
BGC	—Board	Governor and council
BS	—Board and commission	Senate

HOUSE ROLL CALL

19

SUBJECT:

	Yea	Nay	Absent
ABOOD		1	
ADAMS	OK	2	
BARNES		3	
BETTISWORTH		4	
BUSSELL		5	
CATO		6	
CLOCKSIN			
COWDERY	OK	7	
DAVIS			
DUNCAN			
FLOOD	OK	8	
FRITZ	OK	9	
FULLER	OK	10	
FURNACE		11	
GOLL			
GRUSSENDORF			
HERRMANN		12	
HURLBERT	OK	13	
KOPONEN			
LACHER		14	
LARSON			
LINDAUER		15	
LISKA		16	
MALONE			
MARTIN		26	
MCBRIDE			
MILLER (D)			
MILLER (R)		25	
PESTINGER		17	
PHILLIPS			
RINGSTAD	OK	18	
SHULTZ		19	
SZYMANSKI	OK	20	
TISCHER		21	
UEHLING		22	
VASKA			
WARD		23	
WENDTE			
ZHAROFF			
*HAYES		24	

MEMORANDUM

TO: Representative Rick Uehling
FROM: Bill Lovell, Staff
DATE: March 21, 1983
RE: CSSSHJR 7

On Wednesday, March 16, 1983, Committee Substitute for Sponsor Substitute for House Joint Resolution 7 (Judiciary) was considered by the House. By a vote of 27 to 12, the resolution passed.

Those voting in favor of the resolution were Abood, Adams, Barnes, Bettisworth, Bussell, Cato, Cowdery, Flood, Fritz, Fuller, Furnace, Goll, Hayes, Herrmann, Hurlbert, Lacher, Larson, Lindauer, Liska, Martin, M.W. Miller, Pestinger, Ringstad, Shultz, Tischer, Uehling, Ward.

Those voting against the resolution were Clocksin, Davis, Duncan, Grussendorf, Koponen, Malone, McBride, M.M. Miller, Phillips, Vaska, Wendte, Zharoff.

Represesntative Szymanski was excused from the House.

Representative Clocksin served notice of reconsideration of his vote.

CSSSHJR 7(Jud)

CSSSHJR 7(Jud) was again before the House.

Representative Barnes moved and asked unanimous consent that CSSSHJR 7(Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSSSHJR 7(Jud) was read the third time.

The question being: "Shall CSSSHJR 7(Jud) pass the House?" The roll was taken with the following result:

CSSSHJR 7(JUD)

Yeas:	27	~~Abood~~, Adams, ~~Barnes~~, ~~Bettisworth~~, ~~Bussell~~, ~~Gato~~, Cowdery, Flood, Fritz, Fuller, ~~Funsse~~, Goll, ~~Hayes~~, ~~Herman~~, Hurlbert, ~~Lacher~~, Larson, ~~Lindsey~~, ~~Lloyd~~, Martin, Miller,M.W., ~~Pessinger~~, Ringstad, ~~Shultz~~, ~~Tiesher~~, ~~Uehling~~, Ward
Nays:	12	Clocksin, Davis, Duncan, Grussendorf, Koponen, Malone, McBride, Miller,M.M., Phillips, Vaska, Wendte, Zharoff
Excused:	1	Szymanski
Absent:	0	

And so, CSSSHJR 7(Jud) passed the House.

Representative Clocksin served notice of reconsideration of his vote on CSSSHJR 7(Jud).

Table 19

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	GB	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	A
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	G	(a-4)	A	...	AT	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	(a-5)	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	G	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	GS	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	CS	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

STATEMENT BY REPRESENTATIVE RICK UEHLING ON BEHALF OF
HOUSE JOINT RESOLUTION SEVEN

I thank you, Mr. Chairman and members of the committee, for this opportunity to voice my reasons for introducing House Joint Resolution Seven, proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general.

The idea behind HJR 7, that of electing Alaska's attorney general, is not an original concept. For years, many Alaskans have supported the principle of electing our state's highest law enforcement officer. The past five years have seen similar legislation introduced by Senator Brad Bradley, Representative Terry Martin, and Majority Leader Ramona Barnes. As early as the Constitutional Convention in 1956, when Frank Barr of Fairbanks introduced an amendment to require the election of the AG, many citizens have recognized the need for a truly impartial and independent attorney general. Many believe, as Mr. Barr expressed the ideal, "the attorney general should be 'the people's attorney,' elected by and responsible to the citizens of Alaska."

Since our Constitutional Convention rejected Barr's suggestion, many of the states have provided for the election of attorneys general. In fact, today all but five of the fifty states elect their AG, a dramatic reversal from 1956 when only a dozen states elected attorneys general. Even the most avid opponent of electing the attorney general would have to admit that the last fifteen years have clearly indicated overwhelming national sympathy for the idea.

Today, my arguments in favor of HJR Seven will concentrate on three main points: 1. election provides for greater autonomy for the AG's office; 2. election provides for freedom from political manipulation; and 3. election provides for greater personal responsibility by the attorney general.

Today the attorney general is defined in AS 44.23.020 as "the legal advisor of the governor and other state officers." By very definition, the actions of the AG are subject to the whims of the governor. Providing for the election of future attorneys general will free the state's legal arm to exercise more autonomous control over prosecutorial and other activities. As an elected official, the AG would respond directly to the public. To quote former New York Attorney General Louis J.

Lefkowitz in his classic defense of elected attorneys general:

> The elected attorney general 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 judgement. 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.

My second argument in favor of HJR Seven is to the effect that, if elective, the office of attorney general will be free from political manipulation by the governor's office. As our system is arranged now, the attorney general is just another cabinet officer, directly responsible to the governor. Although I will certainly not argue that any of the fine men who have served in the office of attorney general have been politically manipulated, I will eagerly point out that the potential does exist. As our law is written today, the attorney general is the servant of the governor: he makes prosecutions as the governor sees fit and he generally interprets the law as the governor directs. This arrangement is obviously dangerous. Requiring the election of the attorney general would help eliminate this danger. Former Illinois Attorney General William J. Scott made this point clearly when he argued, "the Attorney General's roles of 'government watchdog' and 'attorney for the people' require independence from the governor." Former Attorney General Lefkowitz argued the same point when he said that electing the state's AG provides that "he can appear in Court without fear or favor--an attorney in the fullest and finest sense of the word."

My third observation is that election would provide a sense of personal responsibility for the attorney general. As an official directly responsible to the electorate, an elected attorney general would naturally feel a personal responsibility for the activities of the department. Perhaps more than any other reason, this argument hits the real point of electing Alaska's attorney general. That is in fact the main purpose in electing almost any official, be it our governor, our judges, or our mayors. When the direct authority and responsibility inherent to a particular position become so unusually varied and important, it is prudent to make that official directly answerable to the people he serves. Going again to General Lefkowitz: "To sum it up--an elected

attorney general has a measure of independence and a sense of personal and direct responsibility to the public."

Ladies and gentlemen, I will not tell you that there are no problems with the election of Alaska's attorney general or of any state official, for that matter: elections cost money; politics is inevitably involved, even in a non-partisan election as in this bill; personal greed and ambition are simply impossible to eliminate; and effective governments do require strong executives. However, I am willing to tell you that the potential benefits of an elected attorney general are far more numerous and important than any costs, real or imagined. The arguments I have made today hopefully demonstrate that point.

In my opinion, the argument is simply this: does the attorney general represent the governor of Alaska or the thousands of men and women who make up this great state? If you believe like I do that the attorney general should represent all of Alaska's citizens, then I encourage you to support this resolution to make that official directly responsible to the people represented. I encourage you to vote "Do Pass" on this important issue.

Thank you.

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)

A BILL ENACTED BY THE PEOPLE OF THE STATE OF ALASKA
UNDER THEIR AUTHORITY GRANTED BY

THE CONSTITUTION ART. I SEC. 2

"All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

AND THE CONSTITUTION ART. 1 SEC. 5

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." (emphasis added)

AND THE CONSTITUTION ART. 1 SEC. 6

"The right of the people peaceably to assemble and to petition the government shall never be abridged."

This is an advisory vote and a plebiscite - an expression of the people's will by direct ballot on a political issue.

A BILL

"An Act relating to the election of the Attorney General of the State of Alaska.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

Article III, sec. 29. is amended by adding a new section to read:

(a) ELECTION OF THE ATTORNEY GENERAL. The attorney general shall be chosen by the qualified voters of the State on nonpartisan ballots. Candidates for attorney general shall file for the office as prescribed by law. The candidates receiving the greatest and the second greatest number of votes on a nonpartisan ballot at the primary election shall be candidates in the general election. The candidate receiving the greatest number of votes on a nonpartisan ballot at the general election shall be attorney general.

(b) This Act is effective for primary and general election of 1986.

Inside a rare debate

Attorney general bill voted down

By JOHN LINDBACK
Daily News reporter

JUNEAU — It was an extraordinary day in the Alaska State Senate.

First, a bill that would ask voters to decide if Alaskans should elect their attorney general failed by a 9-11 vote on the Senate floor.

Rejection of a bill by a floor vote is uncommon. Sponsors usually make sure they've garnered enough support before they ask for a floor vote.

In addition, senators debated the bill for 45 minutes. Floor debate in the Senate, where battles are usually fought in closed-door caucuses or committees, is as rare as sunburn in Barrow.

The Senate's anomaly — which included flurries of note-passing and occasional laughter — progressed like this:

11:30 a.m. — The words "Senate Joint Resolution 9," a bill proposing amendments to the Constitution relating to the election of the attorney general, are typed onto the Senate's electronic vote board.

11:31 a.m. — Sen. Vic Fischer, D-Anchorage and a delegate to the 1955 Alaska Constitutional Convention, proposes an amendment that would repeal the part of the Constitution that says the executive power of the state is vested in the governor. It might as well be repealed if the bill is passed, Fischer said, because an elected attorney general would lead to friction in state government and a fundamental change in the way framers of the Constitution structured the executive branch.

11:35 a.m. — The Senate defeats Fischer's amendment 16-4. Among those joining Fischer on the losing end of the vote was Sen. Jack Coghill, R-Nenana, the only other senator who was a delegate to

See Page B-3, SENATE

SENATE: Attorney general bill voted down

Continued from Page B-1

the Constitutional Convention.

11:36 a.m. — Senate Majority Leader Rick Halford and Sen. Jay Kerttula propose an amendment that states an attorney general is not eligible to hold office as governor or lieutenant governor until four years after leaving office as attorney general. The amendment might allay fears of some critics who contend an ambitious elected attorney general would politicize the job in hopes of later becoming governor, Kerttula said.

11:39 a.m. — Senate Minority Leader Bill Ray, D-Juneau, said the amendment makes a "silk purse out of a sow." It passes on a 15-5 vote.

11:40 a.m. — Senate President Don Bennett calls for general debate on the full bill.

11:41 a.m. — Sen. Joe Josephson, D-Anchorage, cites excerpts from Alexander Hamilton's Federalist Papers and argues that an elected attorney general would devote time to a political career in addition to serving as the state's chief lawyer. Elected attorneys general are not immune from corruption, Josephson said, citing the recent indictment of the West Virginia attorney general. The name of the West Virginia attorney general, Charlie Brown, draws giggles from the chambers. In addition, the governor will have to hire his own lawyer if he considers the attorney general a political rival, he said.

11:50 a.m. — Sen. Bob Ziegler, D-Ketchikan, asks proponents of the bill to "tell us why it's a good idea."

11:50 a.m. — Prime sponsor Sen. Edna DeVries, R-Palmer, said an attorney general appointed by the governor is more responsive to the governor than the general public. Alaska should join the trend and join the 43 other states who elect their attorney general, she said.

11:52 a.m. — Kerttula says the Alaska Constitution purposefully sets up a strong executive branch. That may not be true in other states.

11:59 a.m. — Sen. Pat Rodey said Alexander Hamilton would have supported electing the attorney general. It provides more checks and balances in government, a fundamental principle cited in the Federalist Papers, Rodey said.

12:04 p.m. — People should pay attention to the historical perspective and general agreement on the issue by Fischer and Coghill, Kerttula said. Normally, "neither one of them agree on much of anything," he said.

12:09 p.m. — Sen. Arliss Sturgulewski saluted the debate on the bill and concurred with Rodey. The public sometimes has a reason to wonder whether the attorney general is "their lawyer or the governor's lawyer," she said.

12:10 p.m. — Quoting from Fischer's book about the Constitutional Convention, DeVries said some delegates wanted an elected attorney general "to keep the executive honest."

12:12 p.m. — Fischer said it was flattering to be quoted as authority on the state Constitution. DeVries, smiling, turns to Sen. Mitch Abood, R-Anchorage, and loudly whispers, "I didn't say he was an authority." An elected attorney general would automatically aspire to be governor, Fischer said.

12:14 p.m. — Several members of the Senate yell "Question!" The practice warns the President that those yelling want to vote.

12:15 p.m. — Bennett explains that since the resolution calls for an amendment to the Constitution to be placed before voters, the rules require at least 14 votes for passage.

12:15 p.m. — The bill fails 9-11.

12:16 p.m. — Sen te Rules Committee Chairman Tim Kelly asks that sponsors of the bill be allowed to return it to his committee and resubmit it for another floor vote when they feel they have 14 votes. Nobody objects.

After the floor session, DeVries said she knew the bill would lose. But polls show 80 percent of the state's voters favor electing the attorney general and the people deserve a debate on the subject, she said.

She's hopeful, she said, that citizens will put pressure on senators who voted no to change their minds on the subject. Then she could bring the bill back to the floor, she said.

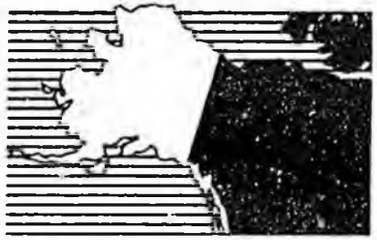
"Let the people now come forth. The ball is back in their court," DeVries said.

Voting in favor of putting a constitutional amendment before the voters were: Abood; Bennett; DeVries; Halford; Kelly; Rodey; Sturgulewski; Jan Faiks, R-Anchorage, and Paul Fischer, R-Soldotna.

Voting against the measure were: Coghill; Fischer of Anchorage; Josephson; Kerttula; Ray; Ziegler; Dick Eliason, R-Sitka; Bettye Fahrenkamp, D-Fairbanks; Frank Ferguson, D-Kotzebue; John Sackett, R-Ruby and Fred Zharoff, D-Kodiak.

ia monocytogenes, and they can cause fatal illness in pregnant women, small children and frail elderly people, the agency said. In healthy adults, the bacteria can produce flu-like symptoms.

The DEC did not identify the brand of brie cheese found to be contaminated. Officials said that to be safe, Alaskans should avoid all brie that was made in France.



White House gets conveyance bill

Our Washington bureau

WASHINGTON — The Senate this week passed and sent to the White House a bill to extend for one year the time period for the state to file legal challenges against the conveyance of submerged land to Alaska Natives.

The bill cleared the Senate by unanimous consent and is expected to be signed by President Reagan.

The Alaska Lands Act of 1980 set a five-year statute of limitations on court challenges to the conveyance of submerged lands. But the state and the Natives sought a one-year extension of the deadline, while they continue negotiations on a comprehensive settlement to the problem.

Sen. Frank Murkowski, R-Alaska, said the bill is needed "to avoid numerous and needless lawsuits between the state and the Natives."

Introduced: 1/29/85
Referred: Judiciary

IN THE SENATE

BY DEVRIES, ABOOD, FAIKS AND RODEY

SENATE JOINT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

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

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article III, sec. 23, Constitution of the State of Alaska is amended to read:

SECTION 23. REORGANIZATION. (a) Except as provided in (b) of this section, the [THE] governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

(b) The governor may not make a change in the organization or function of any unit of the executive branch which is headed by the attorney general.

* Sec. 2. Article III, sec. 24, Constitution of the State of Alaska is amended to read:

SECTION 24. SUPERVISION. Except for any unit of the executive branch which is headed by the attorney general, each [EACH] principal department shall be under the supervision of the governor.

SECTION 30. LIMIT ON TENURE. A person who has been elected attorney general for two full successive terms is not eligible to hold that office until one full term has intervened.

SECTION 31. VACANCY. In case of a vacancy in the office of attorney general for any reason, a successor shall be elected for the remainder of the unexpired term at the first general election occurring not less than six months after the office becomes vacant. The governor may appoint a qualified person to fill the office between the date it becomes vacant and the date it is filled by election.

SECTION 32. COMPENSATION. The compensation of the attorney general shall be prescribed by law and shall not be diminished during the term of office, unless by general law applying to all salaried officers of the State.

SECTION 33. DUTIES. The attorney general shall be the legal adviser of the state officers, and shall perform other duties prescribed by law.

SECTION 34. ELECTION AND TERM OF ATTORNEY GENERAL. The first election for an attorney general required by the constitution to be elected shall occur at the first general election occurring after the office is established under the constitution. If a vacancy occurs in the office of attorney general before the first general election held after the office is established under the constitution, the office shall be filled under the law as it existed before the office was established under the constitution. Except as otherwise provided in the constitution, the term of office of attorney general required by the constitution to be elected begins at noon on the first Monday in December following the general election for that office and it expires at noon on the first Monday in December four years later.

* Sec. 5. The amendments proposed by this resolution shall be placed

before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

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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.

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[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.

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[72] *Ibid.*, pp. 2245-52.
[73] *Ibid.*, p. 2249.
[74] *Ibid.*, pp. 2048-53, 2062
[75] *Ibid.*, pp. 2053-58, 2151

The Alaska Attorney General: Elected or Appointed?

by Norman C. Gorsuch

The office of state attorneys general can either strengthen or check the executive branch. The Alaska attorney general plays a significant role in public policy-making. Currently, Alaska's governor appoints the state attorney general, and until the argument about the range of executive power is settled, the controversy about the the office's election or appointment will persist.

A History and De cription of the Office of the Attorney General

The first office of the attorney general was created in 1461 when the King of England appointed a person to direct all of his representatives who appeared in the royal courts. The common law decisions of these courts defined the attorney general's duties, which, in essence, were to protect the royal property, prerogatives, and revenue, and to prosecute those persons accused of committing crimes. Examples of these duties included recovering for damages done to royal property, regulating public charities and trusts, repealing grants and patents, and prosecuting misdemeanor and felony crimes. By 1700, the attorney general was accorded membership in Parliament to explain crown legislation. (1)

When the American Colonies were settled, colonial attorneys general were appointed by the royal governors and were deemed to exercise all of the common law powers inherent in the office of the attorney general of England. After the Revolutionary War, the new state courts decided that the common law powers exercised by the Attorney General of England and discussed above were an inherent part of the office of state attorney general. In addition, most states ratified this grant of powers in state constitutions or statutes. (2)

The method of selecting state attorneys general evolved in stages. Prior to Andrew Jackson's presidency, most states provided for the appointment of the attorney general by the governor or legislature. With the advent of Andrew Jackson's presidency, the concept of sovereign democracy emerged. The people were seen as the source of sovereign power, and they exercised it through popularly elected officials. In the late nineteenth century, states began to require the election of the attorney general. Today, 44 states elect the attorney general. Of the six states that appoint the attorney general, most provide for appointment by the governor, and some by the legislature or the state supreme court. (3)

With the evolution of sovereign democracy, state courts decided that state attorneys general now represented the rights, prerogatives, and interests of the general public in carrying out their common law duties of office. In effect the courts substituted the public for the king as the client of the attorney general, thus giving the attorney general the power to protect public prerogatives, property and revenue. Indeed, there are several state supreme court opinions which hold that an attorney general may bring any action in court deemed necessary to enforce or protect any public right or interest and as a corollary power may exercise virtually plenary discretion in the disposition of such action. However, while state attorneys general possess these common law powers, state constitutions or statutes may limit or preclude the exercise of some or all of them. (4)

Another development in the United States has been the expansion of the

powers of state attorneys general through the delegation of direct statutory grants of authority by the various state legislatures. For example, in most states, there are anti-trust and consumer protection trade regulation laws and the power to enforce them is delegated by most legislatures to the attorney general. [5]

Finally, the office of the state attorney general has been strengthened as an advocate for the people on a broad range of issues for reasons relating to its institutional characteristics. First, the office possesses a firm place in the tradition of English and American institutions; second, the office is a statewide one and, therefore, it has the advantages and disadvantages of statewide exposure and argument; third, the office is also closely connected to the state's political chief executive through the powers to give legal counsel to state agencies and to represent them in litigation; fourth, the office has a close connection to the judicial system; and fifth, the office is staffed by attorneys, and thus, a natural power base exists in the legal community of the state based upon the professional relationship among members of the Bar. [6]

The Role of State Attorneys General in Public Policy Decisions

It is practically impossible to make any public decision without knowing first, the legal parameters within which the agency or public official may act; and second, the adverse legal consequences of proposed courses of action within those parameters. For example, actions outside the scope of a public official's statutory powers could expose the official to personal liability for any damages caused as a result of the action.

Frequently, the practical boundaries of these legal parameters are determined by political constraints. Thus, in many public decisions involving legal issues, attorneys general play a significant indirect role through furnishing legal advice to help public officials balance the adverse legal consequences of their decisions within those politically imposed parameters. An example of this balancing occurs when deciding what can constitutionally be done to ensure local Alaskan hire by out-of-state companies when the most direct way to do so through mandating it by statute is unconstitutional based on cases decided by the Alaska and U.S. supreme courts. In this area, the legislature enacted a bill allowing the Alaska commissioner of labor to designate economically distressed zones based on economic and employment characteristics and require local hire on public projects within those zones. The bill was drafted with the state attorney general's advice. It was not totally politically acceptable, but was the best legal position constitutionally permitted based upon U.S. Supreme Court opinions. Even this new one has been challenged by a contractor as unconstitutional. Therefore, this issue will once again be reviewed by the appellate courts.

The legal advice given to state officials engaged in making these public decisions is frequently found in advisory opinions, a written memorandum from the attorney general which answers a question of law posed by any public official in the state executive or legislative branch of government. This mechanism, next to oral advice, is the most frequently utilized tool in public legal practice and plays an important role in policy decisions.

The legal status of opinions by attorneys general has been interpreted frequently by the courts. This status varies from state to state. The judiciary and the legislature generally treat them as persuasive, but not controlling on the legal issues they address. Several state courts and some state statutes provide that public officials of the executive branch are bound by them. Even where they are not recognized as binding on executive branch officials, most recipients follow them. The advantages in complying with them are, first, it can shield the official from the political consequences of a decision; and second, it allows the public official to retain official immunity from any personal liability for actions taken in reliance on the opinion. [7]

The Powers, Duties and Role of the Attorney General in Other States

The powers and duties of other state attorneys general range from a maxi-

In Support of Election:
"An elected attorney general would be 'the people's attorney' and function as an ombudsman and watchdog for them."

mum of highly centralized, exclusive authority to provide legal counsel to the state, litigate on behalf of the state and prosecute crimes to a minimum of shared state legal authority with no statewide criminal prosecution jurisdiction. For example, state attorneys general do not possess statewide criminal prosecution jurisdiction with the exception of Delaware, Rhode Island, and Alaska. In other states criminal prosecution is conducted by elected or appointed municipal, county or city district attorneys.

In addition, attorneys general usually do not have exclusive authority to represent the state in litigation or to be the exclusive legal advisor to state agencies. In many states, the governor's office has its own general counsel and many state agencies have their own house counsel. In those states, the attorney general represents the governor or agencies only in court. Legal advice to the governor or agency prior to litigation is furnished frequently by house counsel. In most states, while the attorney general issues official opinions upon request and thus, can influence public policy decisions; frequently, the attorney general does not play a significant policy making role within the state administration because the attorney general is a competing elected official. Exceptions to this situation exist when the governor and attorney general are political allies, share the same philosophy, or are personal friends. [8]

The Powers, Duties and Role of the Attorney General of Alaska

In Alaska, the attorney general is a member of the governor's cabinet. As such, the office functions as the general counsel to the governor and state officials. Thus, the attorney general plays a constant role in the development and formulation of public policy on a wide range of issues.

In addition, the Alaska Supreme Court has stated that the attorney general has the exclusive authority in the state government to make any and all decisions relating to the disposition of any state litigation and the exercise of this discretion by the attorney general within constitutional bounds is not subject to judicial review. However, in order to maintain good attorney-client relations, the attorney general rarely exercises such authority without consultation with and concurrence by the state agencies involved. In major cases, the attorney general also consults with the governor and, if necessary, the legislature. [9]

The Alaska attorney general is appointed by the governor, confirmed by the legislature, and serves at the pleasure of the governor. In Sections 44.23. 010-060 of the Alaska Statutes, the legislature created the Office of the Attorney General as Chief of the State Department of Law and vested that department with certain powers. Those powers are as follows:

1. Possession of authority as the exclusive legal advisor to the state executive branch of government, exercising this power through the drafting or reviewing of all executive branch legal instruments and legislation, and the rendering of legal opinions;

2. Representation of the state in all civil litigation;

3. Prosecution of all violations of state criminal laws;

4. Initiation of actions to collect state revenue;

5. Recommendation to the legislature of necessary changes in the laws;

6. Promotion of uniform laws adoption;

7. Preparation of information on landlord and tenant rights;

8. Possession of exclusive authority to enforce the consumer protection and anti-trust laws; and

9. Possession of all common law powers generally inherent in the office of the attorney general. Thus, the Alaska attorney general is an example of the highly centralized exclusive legal authority model.

Arguments in Support of Electing the Attorney General

The theme in the arguments supporting the election the attorney general is a simple one focusing on the independence that direct election would give the office. An elected attorney general would be "the people's attorney" and function as an omsbudsman and watchdog for them. Independent

election would mean that the attorney general was not the creature of a particular administration. As such, the attorney general would be free to render legal opinions solely on the basis of the law and not as a legal advocate for the administration. In addition, it is argued that an elected attorney general would be free to oppose policies of the state government that are considered inconsistent with the law and to investigate and prosecute apparent wrongdoing both in and out of government without fear or favor. [10]

Also, it is argued that the attorney general is elected in 44 states and the concept appears to be working in those jurisdictions. Some also argue that the attorney general's work is in areas where the governor has little or no interest, such as consumer protection, antitrust enforcement, and criminal prosecution. Thus, much of the work does not interfere with the executive responsibilities of the governor's office so that the results of the electoral competition are not as severe as supporters of the appointment process argue. It is also argued that if a governor wants house counsel to furnish legal advice to the governor's office, most governors can appoint such staff counsel. Furthermore, proponents of election argue it is not even necessary for the attorney general to act as general counsel to the governor's office. In addition, some also argue that because of the legal power of the office, an attorney general's duties are of a higher order, similar to that of a judge, and therefore, the attorney general should have the elected independence of a judge. [11]

Arguments in Support of Appointing the Attorney General

The arguments in opposition to the election of the attorney general and in support of appointment by the governor are more complex because of the need to discuss how an appointed attorney general impacts the structure and relationships within the executive branch of state government. The focus of the argument is based upon the need to strengthen the executive branch of government through the appointive power of the chief executive. [12]

Proponents of the appointment process believe that good management requires an appointed attorney general so that the governor can have a philosophically compatible, cohesive, and unified team to carry out the responsibilities of the executive branch of government. Thus, the political accountability for actions of the executive branch and the executive responsibility for those actions are lodged in the office of the governor. It is clear where the responsibility lies and the governor is the one answerable to the public. [13]

In addition, they argue that when governors are forced to deal with a competing elected attorney general, there may be some question as to whether or not the advice, no matter how wise or legally sound, will be taken or looked upon with suspicion and hostility, thus giving rise to conflict. This is because the governor and attorney general would be bringing different policy perspectives to the same public issue. These perspectives may be rooted in different constituency bases. As both are elected, neither one can be considered a final authority to resolve the issue.

Some argue that electing the attorney general can delay the policy resolution process. They point out that in many states with an elected attorney general, governors appoint their own general counsel and, in addition, house counsel are appointed frequently by state agencies accountable to the governor. These house counsel may provide conflicting legal advice to that of the elected attorney general. The effect of this conflicting advice can be to delay resolution of those issues within the executive branch. In addition, whenever there is litigation involving state agencies, house counsel may file friend of the court briefs or otherwise intervene in court asserting a position on legal issues different from that of the elected attorney general. Proponents of the appointment process argue that those different positions can confuse the legislature, the public, and the courts on the executive branch policy. [15]

Advocates of appointing the attorney general also argue that electing the attorney general will increase state operating budgets. First, the governor

In Support of Appointment:
"Good management requires an appointed attorney general so that the governor can have a philosophically compatible, cohesive and unified team . . . "

will insist on a general counsel and house counsel for agencies that are responsible to the governor's office. Thus, it will be necessary to pay for an additional layer of attorneys in the executive branch. Second, in order to maximize the perceived benefits of election, the elected attorney general must have additional, duplicate, independent support staff, not answerable to the governor, to execute personnel, budget, and other administrative policy or the governor could unfairly infringe on the attorney general's independence of action.

In response to the argument that only an elected attorney general can investigate and prosecute wrongdoing in state government with the appropriate degree of independence, proponents of the appointment process argue that the attorney general is not the governor's personal lawyer but the attorney for the institution of the governor's office.

Also, they point out that as a member of the legal profession, the attorney general is affiliated with the judiciary and functions as an officer of the court. Thus the appointed attorney general possesses the prerequisite professional independence from the governor. They believe that the appointed attorney general is capable of investigating all officials of the executive branch of government, including the governor, and prosecuting wrongdoing if necessary.

This is because of constraints placed upon the holder of the office by the statutes, regulations, rules of court, and canons of professional and prosecutorial ethics which require the attorney general to act in these criminal matters based only upon the evidence, the law, and the canons. They also believe that to make decisions in these matters based upon personal and political reasons exposes the appointed attorney general to charges of obstruction of justice and the possibility of suspension or disbarment from the legal profession.

Subsidiary arguments in support of appointing the attorney general can also be made. Some argue that appointed attorneys general do "represent the public" and the misperception that they do not is created because they have no need to generate favorable publicity by constantly calling attention to external achievements in order to create an image as "the people's attorney." It is also argued that the appointed attorney general acts just like an omsbudsman through the rendering of legal advice to state officials as a member of the governor's team. This advice helps to ensure that these officials comply with the statutes and regulations governing their programs, and enforce fairness and impartiality in government dealings with the public.

Another argument in support of appointment is that an elected attorney general must allocate time to fund raising and other political activities, thus detracting from that required to manage the attorney general's office and resulting in a reduced credibility for the office because it will be perceived to be too "political." Legal opinions issued by an appointed attorney general are likely to be more professional because there is no need to pay attention to political polls when considering legal issues.

Some argue that interpreting the law and running a large law office are essentially technical tasks and it is not necessary that the official charged with these duties be elected. Also, it is believed that highly qualified attorneys would not become attorneys general if they had to run in a statewide election.

Finally, those who argue for appointment also have some tradition on their side. They state that no one has ever seriously suggested electing the United States attorney general. They believe that the people do participate in the selection of the appointed attorney general through their legislator when the legislature conducts the confirmation process, not unlike the advice and consent of the U.S. Senate over presidential nominees for attorney general. [16]

Conclusion

The underlying issue in these arguments is how the election of the Alaska attorney general affects the balance of power among the branches of state government and the policy-making process within the executive branch of government. In essence the argument revolves around whether one believes in a strong or weak executive branch

of government. The current strength of the Alaska executive in exercising its authority is its ability to speak with one voice. When the attorney general is elected, the ability of the executive branch to speak with one voice to the legislature, the judiciary and the public is altered and the accountability for executive branch actions is split. If one believes that the power of the executive branch should be divided or decentralized through direct electoral accountability of some of its parts, then one generally supports election of the attorney general.

An elected attorney general has specific constitutional and statutory duties of an executive nature. Those duties may include litigating civil law suits to enforce compliance with state law and to protect state interests and prosecuting violations of state criminal law. Both civil and criminal enforcement are based on the police power to protect the health, welfare and safety of society. These enforcement functions are a key element of executive authority, in essence, the power to force compliance with the law.

If the attorney general is elected, this power to enforce state law will be split between two elected officials. Those who support election believe this split serves to check potential abuses of executive power and makes the executive more responsive. Those who support appointment believe this system leads to frustration, delay, and a lack of responsiveness by the executive branch of government. Thus, depending on one's philosophy of government, the same facts are viewed quite differently. As the discussion demonstrates, this debate is really about two different views of state government and is not new in our history. The historical development of state constitutions in the country reflects this quandary of a strong versus a weak executive. Debate over the election of the attorney general is only a part of this larger issue. *-APAJ-*

References and Notes

(1) *See generally* State v. Finch, 280 P. 910 (Kan. 1928); A. Sill (Attorney General of New Jersey), *Common Law Powers of the Attorney General* 1-6 (1967); 7 Am. Jur. 2d *Attorney General* Sec. 9, at 7-8 (1980). In addition, the common law powers of the attorney general eventually were summarized in Blackstone. Blackstone concluded that the attorney general could investigate and prosecute actions necessary to protect the real property of the King, review lands and chattels that should be held by the King, repeal royal grants or patents, recover for damages done to royal property, possess unclaimed property, examine the basis of an individual's claim to office, franchise, or privilege, compel admission and remission of a properly appointed official to his office, ensure proper maintenance of public charities and trusts, and initiate, without prior indictment by grand jury, misdemeanor criminal prosecutions and, after grand jury indictment, felony prosecutions. 3 W. Blackstone, *Commentaries* 27, 257-64, 427; *see* A. Sills, *supra.*

(2) People v. Kramer, 68 N.Y. Supp. 383, 386 (1900); National Association of Attorneys General, *Powers, Duties and Operations of the State Attorneys General* 77-79 (1977). A partial listing of the common law powers found to be inherent in the office of the attorney general by several state court decisions can be summarized.

Attorneys general have the power to: 1) Recover damages for unlawfully removed sand and gravel from state tidewater lands; 2) Abate public nuisances through equitable actions; 3) Intervene in lawsuits over contested wills when the state has a possible interest; 4) Challenge a reduction of state tax assessments; 5) Institute actions to collect unpaid taxes and premiums for a state worker's compensation fund; 6) Seek removal of public officials for misconduct in office; 7) Proceed in equity to cancel the fraudulent registration of voters; 8) Enforce the restricted provisions of a deed from the state; 9) Enforce public and charitable trusts; 10) Bring suit to cancel a fraudulently procured United States patent for either land or an invention; 11) Intervene when the constitutionality of a state statute is attacked; 12) Challenge the constitutionality of a state statute; 13) Investigate criminal activities and appear

"In essence the argument revolves around whether one believes in a strong or weak executive branch of government."

before a grand jury; 14) Institute and dismiss criminal proceedings; 15) Supercede the local district attorneys in criminal prosecutions; 16) Make any bona fide disposition of these actions that in his or her judgment would be in the best interest of the public. A. Sills, *supra,* at 8-9.

(3) NAAG, *supra*, at 77-79.

(4) 7 Am. Jur. 2d *Attorney General* Sec. 9, at 7-8; Sec. 18, at 22-23. See Public Defender Agency v. Superior Court, 534 P.2d 947, 950-51 (Alaska 1975); State ex rel. Shevin v. Yarborough, 257 S.2d 891 (Fla. 1972); State v. Finch, 280 P. 910, 911-12 (Kan. 1929); Board of Public Utilities Commissioners v. Lehigh Valley Railway Co., 149 A. 263 (N.J. 1930).

(5) *See. e.g.*, AS 45; *see generally* National Association Of Attorneys, *Powers, Duties and Operations of State Attorneys General* (1977)

(6) *See generally* T. Morris and W. Thompson. *The Attorney General as Public Advocate* 2 (1985).

(7) National Association of Attorneys General, *Representing State Agencies* (1979); 7 AM. Jur. 2d *Attorney General* Sec. 11, at 10-12.

(8) *See generally* National Association of Attorneys General. *The Structure of State Legal Services* 20-38 (1977)

(9) Public Defender Agency v. Superior Court, 534 P.2d 947, 950-51 (Alaska 1975).

(10) Report of Maryland Attorney General Francis B. Birch to the Constitutional Convention of Maryland (Sept. 29, 1967); Position Paper by New York Attorney General Lewis J. Lefkowitz, Constitutional Convention Committee on the Executive Branch (June 1, 1967); *Attorney General Should Be Elected--Not Appointed,* Attorney General Clarence A.H. Meyer, Outline of Remarks, Nebraska Constitutional Convention. *See generally* National Association of Attorneys General, *Powers, Duties and Operations of State Attorneys General* (1977); transcript of testimony House State Affairs Committee on HB 456 ("an Act authorizing an advisory vote by the qualified voters of the state on the question of the election of the attorney general") (Jan. 20, 1984).

(11) *See* note 10, *supra.*

(12) National Municipal League, *Model State Constitution* 65-66 (6th ed. 1963.

(13) *See generally* letter from Attorney General Norman C. Gorsuch to Senator Patrick Rodey, Chairman of Senate Judiciary Committee, discussing SJR 9 ("Elected Attorney General") (Apr. 23, 1985); transcript of testimony, House State Affairs Committee, on HB 456 (Jan. 20, 1984).

(14) National Governors Conference, Center for Policy, Research, and Analysis, *Legal Advice for the Governor* (1976).

(15) *See* note 13, *supra.*

(16) *Id.* 4

Mr. Gorsuch is a visiting Associate Professor at the University of Alaska Southeast, School of Business and Public Administration.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

March 11, 1985

MEMORANDUM

TO: Representative Fritz Pettyjohn

FROM: Sharman Haley
Legislative Analyst

RE: Appointment of Special Prosecutors in Other States
Research Request 85-226

You asked about statutory mechanisms for appointment of special prosecutors at the federal level and in other states with appointed attorneys general.

Four other states have appointed attorneys general: Hawaii, New Hampshire, New Jersey, and Wyoming. I also checked four states with elected attorneys general--Idaho, Maine, Massachusetts, and Rhode Island--and spoke with a staff person at the National Association of Attorneys General. None of the states are analogous to Alaska. None of the states have statutory mechanisms for the appointment of special prosecutors, other than general authority for the attorney general to do so when a conflict of interest warrants it. The federal Ethics in Government Act enacted in the wake of Watergate is the only statutory model. A copy of the federal law is attached.

The major difference between Alaska's prosecutorial system and that of other states is that most states have elected local prosecutors whose job it is to investigate suspected criminal conduct and to prosecute. Thus, even with an appointed attorney general, there is always someone independent of the governor with authority to investigate and prosecute. The authority of the attorney general to intervene in local prosecutions provides a check and balance on local prosecutors. In most states the attorney general is also elected and therefore independent of the governor. By contrast, in Alaska, the district attorneys are all employed by the attorney general, who in turn, serves at the will of the governor.

A few states have other unique variations on the general pattern. In Maine, the attorney general is appointed by the legislature. In New Hampshire, independence is fostered by five-year terms of office for the attorney general and each of the assistant attorneys general, while the governor serves only a two-year term. Rhode Island is somewhat similar to Alaska in that the district attorneys are all appointed by

the attorney general. The attorney general, however, is elected. New Jersey's system is the most similar to Alaska's in that the attorney general and all of the district attorneys are appointed by the governor. They do not serve at the pleasure of the governor, however, but serve five-year, fixed terms. The governor serves only a four-year term. My contact in the AG's office in New Jersey was not aware of any instances in which the appointment of a special prosecutor was a problem.

Title 28 U.S.C.A. §§591-598 provide for the appointment of a special prosecutor when specified high government officals are suspected of a crime and the attorney general determines that his office would have a conflict of interest in pursuing an investigation. Preliminary investigation by the attorney general and application for the appointment of a spcecial prosecutor are entirely at the discretion of the attorney general and not reviewable by any court. Upon application by the attorney general, the court will appoint a special prosecutor and define his or her jurisdiction. The authority and duties of the special prosecutor are defined in law.

* * * * *

I hope that this memorandum has answered your questions. If we can be of any further research assistance, please call this agency.

SH

Attachments

14-0826
Bradley
3/8/85.

IN THE HOUSE BY PETTYJOHN

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the conflict of interest of the attorney general or the Department of Law and to the appointment of independent counsel; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 39.50 is amended by adding new sections to read:

ARTICLE 7. INDEPENDENT COUNSEL ON CONFLICTS OF INTEREST.

Sec. 39.50.300. INVESTIGATION BY ATTORNEY GENERAL. The attorney general shall conduct an investigation under AS 39.50.330 whenever the attorney general receives information sufficient to constitute grounds for investigating the conduct of an individual described in AS 39.50.310 that involves a violation of the criminal law of the state other than an infraction.

Sec. 39.50.310. OFFICERS INVOLVED. (a) The individuals subject to an investigation by the attorney general under AS 39.50.330 are

(1) the governor and lieutenant governor;

(2) the head of each principal department;

(3) an individual working in the Office of the Governor who is compensated at or above Range 24;

(4) an assistant attorney general, district attorney, or assistant district attorney compensated at or above Range 24;

(5) the deputy commissioner and the directors of divisions within the Department of Revenue and the director of the Alaska State Troopers;

(6) the chairman and treasurer of the principal campaign committee that seeks the election or the reelection of the governor and an individual exercising authority as a campaign manager or director of a gubernatorial campaign committee during the incumbency of the governor.

(b) The conduct of an individual described in (a) of this section is subject to an investigation conducted under AS 39.50.330 during the incumbency of the governor served by the individual plus one year after that governor leaves office but in no event longer than two years after the individual leaves office.

(c) The conduct of an individual described in (a) of this section who continues to hold office for not more than 90 days into the term of the next governor is subject to an investigation conducted under AS 39.50.330 during the period the individual serves plus one year after the individual leaves office.

Sec. 39.50.320. OTHER PUBLIC OFFICERS. The attorney general may conduct an investigation under AS 39.50.330 whenever the attorney general receives information sufficient to constitute grounds to investigate the conduct of an individual not described in AS 39.50.310 that involves a violation of a criminal law of the state other than an infraction. The attorney general may conduct the investigation under AS 39.50.330 and shall request the appointment of independent counsel under AS 39.50.360(b) if the attorney general determines that an investigation by the attorney general may appear to result in a personal, financial, or political conflict of interest.

Sec. 39.50.330. PRELIMINARY INVESTIGATION BY ATTORNEY GENERAL. (a) On the receipt of information determined by the attorney general to constitute grounds for the investigation of facts concerning a violation of a criminal law of the state other than an infraction by

an individual described in AS 39.50.310 or 39.50.320, the attorney general shall conduct a preliminary investigation of the facts as the attorney general considers appropriate for not to exceed 90 days. In the review of the facts by the attorney general, the attorney general shall consider

(1) the degree of specificity of the information received; and

(2) the credibility of the source of the information.

(b) On a showing of good cause by the attorney general, the three-judge panel may grant the attorney general a single extension of the preliminary examination for a period not to exceed 60 days.

(c) The attorney general may not convene a grand jury, engage in plea bargaining, grant immunity from prosecution, or issue subpoenas in a preliminary investigation under this section.

(d) During the preliminary investigation under this section and in the determination whether reasonable grounds exist to warrant further investigation or prosecution, the attorney general shall adhere to established policies of the Department of Law with respect to the enforcement of the state criminal laws.

(e) After completing a preliminary investigation under this section, the attorney general shall notify the three-judge panel of the conclusions reached. The notification by the attorney general under this subsection shall be by memorandum containing a summary of the information received and a summary of the results of the preliminary investigation.

(f) The memorandum together with any documents or materials supplied with the memorandum is not a public record under AS 09.25.110 - 09.25.120 and may not be disclosed to any individual apart from the judges of the three-judge panel appointed under AS 39.50.360(a) or

the Department of Law without the approval of the three-judge panel.

Sec. 39.50.340. DETERMINATIONS BY ATTORNEY GENERAL AFTER PRELIMINARY INVESTIGATION. (a) If the attorney general determines on completion of a preliminary investigation under AS 39.50.330 that there are no reasonable grounds to believe that further investigations or prosecution is warranted, the attorney general shall notify the three-judge panel appointed under AS 39.50.360(a) of the results of the preliminary investigation and the three-judge panel may not appoint an independent counsel.

(b) If the attorney general determines on completion of a preliminary investigation under AS 39.50.330 that further investigation or prosecution is warranted, the attorney general shall apply to the three-judge panel for the appointment of independent counsel.

(c) A memorandum to a three-judge panel requesting the appointment of independent counsel shall contain sufficient information to assist the three-judge panel to select independent counsel and to define the prosecutorial jurisdiction of the independent counsel.

(d) The determination of the attorney general under (a) - (b) of this section is not reviewable in any court.

(e) If 90 days have elapsed from the initiation of the preliminary investigation and the attorney general has not made a determination under (a) or (b) of this section, a resident of the state may file a petition with the three-judge panel requesting the appointment of an independent counsel. The three-judge panel shall appoint an independent counsel on its determination that the petition states reasonable grounds for believing that a further investigation or prosecution is warranted.

Sec. 39.50.350. ADDITIONAL INFORMATION. (a) If the attorney general receives additional information sufficient to constitute

grounds to alter a determination made under AS 39.50.340(a), the attorney general shall, not later than 90 days after the receipt of the information, apply to the three-judge panel for the appointment of independent counsel.

(b) The attorney general may request independent counsel to accept a referral of a matter that relates to the prosecutorial jurisdiction of the indeperdent counsel.

Sec. 39.50.360. DUTIES OF A THREE-JUDGE PANEL. (a) There is created within the superior court a panel of five superior court judges to be appointed by the chief justice under rules of the supreme court and for terms as may be prescribed by the supreme court. The chief justice shall designate three judges as members of the panel. The chief justice shall designate the remaining two judges as first and second alternates to sit as members of the panel in the event of disqualification or disability under rules prescribed by the supreme court.

(b) On receipt of a memorandum under AS 39.50.340(c), the three-judge panel shall consider the memorandum and any documents or materials supplied with it. The three-judge panel shall appoint an attorney admitted to practice in the state as independent counsel and shall define the prosecutorial jurisdiction of the independent counsel. The identity of the independent counsel and the prosecutorial jurisdiction may be made public on the request of the attorney general or on a determination by the three-judge panel that disclosure of the identity of the independent counsel and the prosecutorial jurisdiction would be in the best interests of justice. If the identity of the independent counsel and the prosecutorial jurisdiction is not disclosed earlier, the identity of the independent prosecutor and the prosecutorial jurisdiction shall be disclosed if an indictment is returned.

(c) The three-judge panel may expand the prosecutorial jurisdiction of an existing independent counsel in place of the appointment of additional independent counsel.

(d) The three-judge panel may not appoint an individual as independent counsel who holds or recently held an office of profit or trust under the state.

(e) If an individual appointed by a three-judge panel resigns or dies in office with the work of the independent counsel incomplete, the three-judge panel may appoint an individual to complete the work of the former independent counsel. If an individual appointed by a three-judge panel is removed or suspended under AS 39.50.410, the three-judge panel shall appoint an acting independent counsel to serve pending review of the removal or suspension.

(f) On the request by an individual who was the subject of an investigation conducted by an independent counsel under AS 39.50.300 - 39.50.430, the three-judge panel may, in its discretion, award reimbursement from the state for all or a part of attorneys' fees incurred by the individual if

(1) an indictment was not brought against the individual; and

(2) the attorneys' fees would not have been incurred except for the investigation under AS 39.50.300 - 39.50.430.

Sec. 39.50.370. AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL. (a) Notwithstanding any other provision of law, an individual appointed as independent counsel under AS 39.50.360(b) has, with regard to each matter within the prosecutorial jurisdiction of the independent counsel, full power and independent authority to exercise the investigative and prosecutorial functions of the attorney general, the Department of Law, and any officer or employee of the Department of

Law. The investigative and prosecutorial functions of the attorney general and the Department of Law include

(1) the conduct of proceedings before a grand jury;

(2) the conduct of investigations apart from proceedings before a grand jury;

(3) participation in court proceedings and litigation, either civil or criminal;

(4) appeal of a decision in a case or proceeding in which the independent counsel participates in an official capacity;

(5) review of documentary evidence from any source;

(6) contest of the assertion of a testimonial privilege;

(7) review of material otherwise considered confidential under state law if the independent counsel determines that the material is germane to the investigation;

(8) application to a court for a grant of immunity under state law to a witness;

(9) application for warrants, subpoenas, or other court orders;

(10) inspection or use of an original or a copy of a tax return filed under state law to the extent that the attorney general could obtain the tax return for the purposes of an investigation;

(11) initiation of an indictment in the name of the state and the conduct of a trial in a court of the state;

(12) consultation with the district attorney for the district in which a violation of the criminal law is alleged to have occurred.

(b) Independent counsel may request the assistance from the Department of Law and the Department of Law shall provide the requested assistance. Assistance may include access to records, files,

or other material relevant to a matter within the jurisdiction of the independent counsel and the use of resources and personnel necessary to the completion of the duties of the independent counsel.

(c) Independent counsel may request the attorney general to refer a matter related to the prosecutorial jurisdiction of the independent counsel. Independent counsel may accept the referral of a matter from the attorney general if the matter relates to a matter within the prosecutorial jurisdiction of the independent counsel as established by the three-judge panel. If a referral is accepted, the independent counsel shall notify the three-judge panel. Independent counsel may request the three-judge panel to expand the prosecutorial jurisdiction of the independent counsel.

(d) To the extent possible, independent counsel shall adhere to the established policies of the Department of Law with respect to the enforcement of the state criminal laws.

(e) Independent counsel may dismiss a matter within the prosecutorial jurisdiction of the independent counsel without conducting an investigation or at any time before an indictment is returned if the dismissal is consistent with the established policies of the Department of Law with regard to the enforcement of the state criminal laws.

(f) Independent counsel appointed under AS 39.50.360(b) shall receive compensation at a per diem rate equivalent to the annual rate for Range 26 under the salary schedule established under AS 39.27.011.

(g) For the purpose of carrying out duties assigned to independent counsel, an independent counsel has the power to appoint staff, to fix the compensation of staff, and to assign duties to staff. The positions established under this subsection are in the exempt service. An individual appointed to a position under this subsection may be compensated at a rate not exceeding Range 25.

Sec. 39.50.380. REPORTS OF INDEPENDENT COUNSEL. (a) Independent counsel appointed under AS 39.50.360(b) may report to the legislature on the activities of the independent counsel. The reports of independent counsel shall contain information considered appropriate by independent counsel.

(b) Independent counsel shall report to the three-judge panel on the activities of the independent counsel. A report under this subsection shall set out fully and completely a description of the work of the independent counsel, including the disposition of all cases brought and the reasons for declining prosecution on a matter within the prosecutorial jurisdiction of the independent counsel.

(c) The three-judge panel may release to the legislature, the public, and an individual portions of a report made under (b) of this section. The three-judge panel shall make appropriate orders to protect the rights of an individual named in the report and to prevent undue interference with a pending or anticipated prosecution.

(d) The three-judge panel may make a portion of a report under (b) of this section available to an individual named in the report and invite the individual to comment or offer factual information germane to the comments in the report on the individual. The three-judge panel may include the comments and the factual information, in whole or in part, in its publication of the report.

Sec. 39.50.390. IMPEACHMENT. Independent counsel shall advise the senate of credible and substantial information received by independent counsel that may constitute grounds for impeachment. Documents and records developed by the independent counsel are available to the senate or the house of representatives during an impeachment proceeding.

Sec. 39.50.400. LEGISLATIVE OVERSIGHT. (a) The judiciary

committees of the legislature may exercise legislative oversight jurisdiction with respect to the conduct of independent counsel and independent counsel shall cooperate with the judiciary committees in the exercise of their legislative oversight jurisdiction.

(b) A majority of majority party members of a judiciary committee or a majority of minority party members of a judiciary committee may request in writing that the attorney general request the appointment of independent counsel.

(c) Not later than 30 days after the receipt of the request or not later than 15 days after the completion of a preliminary investigation of the matter that is the subject of the request, whichever is later, the attorney general shall notify the committee of action taken under the request and, if a request for the appointment of an independent counsel has not been made by the attorney general, why a request has not been made.

(d) The notification shall be provided to the committee on which the members making the request to the attorney general serve and the notification may not be revealed to any other person unless the committee, either on its own initiative or on the request of the attorney general, makes public portions of the notification that will not, in the judgment of the committee, prejudice the rights of an individual.

Sec. 39.50.410. REMOVAL OF INDEPENDENT COUNSEL. (a) An independent counsel appointed under AS 39.50.360(b) may be removed from office, except by impeachment and conviction, only by the personal act of the attorney general and only for good cause, physical disability, mental incapacity, or other condition that substantially impairs the performance of the duties by the independent counsel. If the attorney general removes an independent counsel from office, the attorney general shall promptly report to the three-judge panel and the

judiciary committees of the legislature the facts found and the actual grounds for the removal.

(b) The committees shall make the report available to the public except that each committee may, to protect the rights of an individual named in the report or to prevent undue interference with a pending or anticipated prosecution, delete portions of the report or delay the publication of any or all of the report.

(c) The three-judge panel may release any or all of the report and may make a portion of a report filed under (a) of this section available to an individual named in the report and invite the individual to comment or offer factual information germane to the comments in the report on the individual. The three-judge panel may include the comments and the factual information, in whole or in part, in its publication of the report.

(d) An independent counsel removed under this section may obtain judicial review of the removal in a petition filed before the three-judge panel and, if the removal was based on error of fact or law, may obtain reinstatement and other appropriate relief. The three-judge panel shall expedite the hearing and decision on the petition.

Sec. 39.50.420. TERMINATION OF RESPONSIBILITIES OF AN INDEPENDENT COUNSEL. (a) The responsibilities of an independent counsel terminate when

(1) the independent counsel notifies the attorney general that the investigation of each matter within the prosecutorial jurisdiction of the independent counsel or accepted under AS 39.50.370(c) has been completed or so substantially completed that it would be appropriate for prosecutors from the Department of Law to complete the investigation or prosecution; and

(2) the independent counsel files a final report under

AS 39.50.380.

(b) The three-judge panel may at any time terminate the responsibilities of an individual acting as independent counsel, either on its own motion or on the request of the attorney general, on its determination that the investigation or each matter within the prosecutorial jurisdiction of the independent counsel or accepted under AS 39.50.370(c) has been completed or so substantially completed that it would be appropriate for prosecutors from the Department of Law to complete the investigation or prosecution. If the responsibilities of independent counsel are terminated under this subsection, the independent counsel shall file a final report under AS 39.50.380.

Sec. 39.50.430. RELATIONSHIP WITH DEPARTMENT OF LAW. (a) When a matter is within the prosecutorial jurisdiction of an independent counsel or has been accepted by an independent counsel under AS 39.50.370(c), the Department of Law, the attorney general, and the prosecutors of the Department of Law shall suspend each investigation and proceeding regarding the matter except to the extent that independent counsel requests the assistance of the Department of Law under AS 39.50.370(b).

(b) The provisions of AS 39.50.300 - 39.50.430 do not prevent the attorney general or an attorney from the Department of Law from making a presentation to a court as amicus curiae as to issues raised by a case or proceeding in which an independent counsel participates in an official role.

* Sec. 2. AS 39.25.110 is amended to read:

Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by law, the following positions in the state service constitute the exempt service and are exempt from the provisions of this chapter and the rules adopted under it:

(1) persons elected to public office by popular vote or appointed to fill vacancies in elected offices;

(2) justices, judges, magistrates, and employees of the judicial branch including employees of the Judicial Council;

(3) employees of the state legislature and its agencies;

(4) the head of each principal department in the executive branch;

(5) officers and employees of the University of Alaska;

(6) certificated teachers and noncertificated employees employed by a regional educational attendance area established and organized under AS 14.08.031 - 14.08.041 to teach in, administer, or operate schools under the control of a regional educational attendance area school board;

(7) certificated teachers employed by the Department of Education as correspondence teachers or teachers in skill centers operated by the Department of Education;

(8) patients and inmates employed in state institutions;

(9) persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor;

(10) members of boards, commissions, or authorities;

(11) the officers and employees of the following boards, commissions, and authorities:

(A) Alaska Gas Pipeline Financing Authority;

(B) Alaska Permanent Fund Corporation;

(C) Alaska Energy Center;

(D) Alaska Industrial Development Authority;

(E) Alaska Commercial Fisheries Entry Commission;

(F) Alaska Commission on Postsecondary Education;

(12) the executive secretary and legal counsel of the Alaska Municipal Bond Bank Authority;

(13) physicians licensed to practice in this state and employed by the division of mental health and developmental disabilities, Department of Health and Social Services;

(14) petroleum engineers and petroleum geologists employed in a professional capacity by the Department of Natural Resources and by the Oil and Gas Conservation Commission, except for those employed in the division of geological and geophysical surveys in the Department of Natural Resources;

(15) officers, agents, and employees of the Alcoholic Beverage Control Board granted limited peace officer powers by the Alcoholic Beverage Control Board under AS 04.06.110;

(16) persons employed by the division of marine transportation as masters and members of the crews of vessels who operate the state ferry system and who are covered by a collective bargaining agreement provided in AS 23.40.040;

(17) officers and employees of the state who reside in foreign countries;

(18) employees of the Alaska Seafood Marketing Institute;

(19) firefighters employed by the Department of Natural Resources for a fire emergency;

(20) employees of the Office of the Governor and the office of the lieutenant governor, including the staff of the governor's mansion;

(21) Employees of the Citizens' Advisory Commission on Federal Areas in Alaska (AS 41.37.010);

(22) youth employed by the Department of Natural Resources under the Youth Employment and Student Intern programs;

(23) independent counsel and the staff of independent counsel appointed under AS 39.50.360(b).

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: March 6, 1985

TO: All lawmakers

SUBJECT: Special Prosecutor

FROM: Representative Fritz Pettyjohn

Dear Colleague:

I enclose a copy of Chapter 39 of Title 28 of the United States Code. I am preparing a bill which will be substantially similar to this Chapter.

Any comments or suggestions you might have in this regard would be appreciated.

FP/dw
encl

CHAPTER 39—INDEPENDENT COUNSEL[1]

Sec
591 Applicability of provisions of this chapter
592 Application for appointment of a [2] independent counsel.
593 Duties of the division of the court
594 Authority and duties of a [2] independent counsel
595 Reporting and congressional oversight
596 Removal of a [2] independent counsel; termination of office
597 Relationship with Department of Justice
598 Termination of effect of chapter

[1] Another chapter 39, comprising sections 581 to 589 of this title, is set out ante.

[2] So in original. Probably should read "an".

1983 Amendment. Pub.L. 97-409, § 2(b)(1)(A), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsel" for "special prosecutor" in the chapter heading and in items 592, 594, and 596 of the analysis.

§ 591. Applicability of provisions of this chapter

(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives information sufficient to constitute grounds to investigate that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

(b) The persons referred to in subsection (a) of this section are—

(1) the President and Vice President;

(2) any individual serving in a position listed in section 5312 of title 5;

(3) any individual working in the Executive Office of the President who is compensated at or above a rate equivalent to level II of the Executive Schedule under section 5313 of title 5;

(4) any Assistant Attorney General and any individual working in the Department of Justice compensated at a rate at or above level III of the Executive Schedule under section 5314 of title 5;

(5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

(6) any individual who held any office or position described in any of paragraphs (1) through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;

(7) any individual described in paragraph (6) who continues to hold office for not more than 90 days into the term of the next President during the period such individual serves plus one year after such individual leaves office;

(8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President.

(c) Whenever the Attorney General receives information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General may conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1867, and amended Pub.L. 97-409, §§ 3, 4(a), Jan. 3, 1983, 96 Stat. 2039, 2040.)

1983 Amendment. Subsec. (a). Pub.L. 97-409, § 4(a)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "the Attorney General receives".

Subsec. (b)(3), (4). Pub.L. 97-409, § 3, substituted reference to any individual working in the Executive Office of the President, an Assistant Attorney General or individual working in the Justice Department, the Director and Deputy Director of Central Intelligence and the Commissioner of Internal Revenue, any of the above who held office during the incumbency of the President they served plus one year thereafter but in no event two, an individual such as the latter still in office not more than 90 days into the term of the next President during the individual's service plus one year after he leaves office, and the chairman, treasurer, and any officer exercising authority at the national level of the campaign for the reelection of the President during his incumbency, for reference to any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of Title 5, any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of Title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue, any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President, and any officer of the principal national campaign committee seeking the election or reelection of the President.

Subsec. (c). Pub.L. 97-409, § 4(a)(2), added subsec. (c).

Effective Date. Section 694 of Pub.L. 95-521 provided that: "Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 528, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 503 of such title 28, if the Attorney General determines that—

"(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

"(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act [Oct. 26, 1978]; or

"(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act [Oct. 26, 1978]."

Contingency Fund for Independent Counsels. Section 601(c) of Pub.L. 95-521, as amended Pub.L. 97-409, § 2(c)(2), Jan. 3, 1983, 96 Stat. 2039, provided that: "There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any independent counsels appointed under chapter 39 [relating to special prosecutor [independent counsel]] of title 28 of the United States Code [this chapter] in the carrying out of functions under such chapter."

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

Attorney General ⇨6

C.J.S. Attorney General §§ 7 to 15.

§ 592. Application for appointment of a [1] independent counsel

(a)(1) Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate. In determining whether grounds to investigate exist, the Attorney General shall consider—

(A) the degree of specificity of the information received, and

(B) the credibility of the source of the information.

(2) In conducting preliminary investigations pursuant to this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(b)(1) If the Attorney General, upon completion of the preliminary investigation, finds that there are no reasonable grounds to believe that further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a [1] independent counsel.

(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds reasonable grounds to believe that further investigation or prosecution is warranted, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that there are no reasonable grounds to believe that further investigation or prosecution is warranted, then the Attorney General shall apply to the division of the court for the appointment of a [1] independent counsel. In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(2) If--

(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional information sufficient to constitute grounds to investigate about the matter to which such memorandum related, and

(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that reasonable grounds exist to warrant further investigation or prosecution,

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a [1] independent counsel.

(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a [1] independent counsel and to define that independent counsel's prosecutorial jurisdiction.

(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(e) The Attorney General may ask a [1] independent counsel to accept referral of a matter that relates to a matter within that independent counsel's prosecutorial jurisdiction.

(f) The Attorney General's determination under subsection (c) of this section to apply to the division of the court for the appointment of a [1] independent counsel shall not be reviewable in any court.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1868, and amended Pub.L. 97-409, §§ 2(a)(1), 4(b)-(e), Jan. 3, 1983, 96 Stat. 2039-2041.)

[1] So in original. Probably should read "an".

1983 Amendment. Subsec. (a). Pub.L. 97-409, § 4(b), substituted direction, designated par. (1), that upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate, and that in determining whether grounds to investigate exist, the Attorney General shall consider the degree of specificity of the information received and the credibility of the source of the information for provision that the Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title had engaged in conduct described in section 591(a) of this title, was to conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deemed appropriate, and added par. (2).

Subsec. (b)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(c), substituted "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated that no further investigation or prosecution is warranted".

Subsec. (c)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(d)(1), substituted "finds reasonable grounds to believe that further investigation or prosecution is warranted" for "finds the matter warrants further investigation or prosecution" after "preliminary investigation,".

Pub.L. 97-409, § 4(d)(2), substituted "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated as not to warrant further investigation or prosecution".

Pub.L. 97-409, § 4(d)(3), added provision that in determining whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

Subsec. (c)(2). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" in the provisions following subpar. (B).

Subsec. (c)(2)(A). Pub.L. 97-409, § 4(e)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "receives additional".

Subsec. (c)(2)(B). Pub.L. 97-409, § 4(e)(2), substituted "reasonable grounds exist to warrant" for "such information warrants" after "appropriate, that".

Subsecs. (d)(1), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

References in Text. The Act, referred to in subsec. (a)(1), probably means the Ethics in Government Act of 1978 which enacted this chapter. For complete classification of that Act to the Code, see Short Title note under section 101 of Title 2, The Congress and Tables volume.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 608 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

Attorney General ⇐6.
District and Prosecuting Attorneys ⇐1(1).
C.J.S. Attorney General §§ 7 to 15.
C.J.S. District and Prosecuting Attorneys § 28.

Notes of Decisions

Jurisdiction 2
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Standing 1

1. Standing

Person supplying Attorney General with specific information of suspected criminal conduct by high federal official covered by this chapter has standing to invoke procedures mandated by this chapter upon Attorney General's refusal to investigate. Nathan v. Attorney General of United States, D.C.D.C.1983, 557 F.Supp. 1186.

2. Jurisdiction

District court has jurisdiction to enforce procedures mandated by this chapter upon Attorney's General's refusal to investigate specific information of suspected criminal conduct by high federal officials covered by this chapter, notwithstanding provisions precluding judicial review once Attorney General applies for appointment of special prosecutor. Nathan v. Attorney General of United States, D.C.D.C.1983, 557 F.Supp. 1186.

3. Preliminary investigation

Plaintiffs furnished sufficient "specific information" within meaning of this chapter to trigger preliminary investigation into conduct of any person covered by this chapter named in information submitted by plaintiffs relating to violations of section 1981 et seq. of Title 42 arising out of disruption of parade, but plaintiffs were not entitled to appointment of special prosecutor, absent showing that Attorney General acted in bad faith when deciding not to make preliminary investigation. Nathan v. Attorney General of U.S., D.C.D.C.1983, 563 F.Supp. 815.

§ 593. Duties of the division of the court

(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction. A [1] independent counsel's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor [2] shall be made public when any indictment is returned or any criminal information is filed.

(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing independent counsel, and such expansion may be in lieu of the appointment of an additional independent counsel.

(d) The division of the court may not appoint as a [1] independent counsel any person who holds or recently held any office of profit or trust under the United States.

(e) If a vacancy in office arises by reason of the resignation or death of a [1] independent counsel, the division of the court may appoint a [1] independent counsel to

complete the work of the independent counsel whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a [1] independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

(f) Upon a showing of good cause by the Attorney General, the division of the court may grant a single extension of the preliminary investigation conducted pursuant to section 592(a) of this title for a period not to exceed sixty days.

(g) Upon request by the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, in its discretion, award reimbursement for all or part of the attorney's fees incurred by such subject during such investigation if—

(1) no indictment is brought against such subject; and

(2) the attorney's fees would not have been incurred but for the requirements of this chapter.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, §§ 2(a)(1), 5, Jan. 3, 1983, 96 Stat. 2039, 2041.)

[1] So in original.

[2] So in original. Substitution of "counsel" for "prosecutor" was not made by Pub.L. 97-409.

1983 Amendment. Subsec. (b). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsecs. (c)-(e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Subsecs. (f), (g). Pub.L. 97-409, § 5, added subsecs. (f) and (g).

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 608 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

District and Prosecuting Attorneys ⇐1(1).
Federal Courts ⇐1014.
C.J.S. District and Prosecuting Attorneys §§ 7 to 15.
C.J.S. Federal Courts § 28.

§ 591. Authority and duties of a [1] independent counsel

(a) Notwithstanding any other provision of law, a [1] independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

(1) conducting proceedings before grand juries and other investigations;

(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel deems necessary;

(3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;

(4) reviewing all documentary evidence available from any source;

(5) determining whether to contest the assertion of any testimonial privilege;

(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States; and

(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.

(b) A [1] independent counsel appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

(c) For the purposes of carrying out the duties of the office of independent counsel, a [1] independent counsel shall have power to appoint, fix the compensation, and assign the duties, of such employees as such independent counsel deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

(d) A [1] independent counsel may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

(e) A [1] independent counsel may ask the Attorney General or the division of the court to refer matters related to the independent counsel's prosecutorial jurisdiction. A [1] independent counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within such independent counsel's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the independent counsel shall notify the division of the court.

(f) A [1] independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, §§ 2(a)(1), 6(a)-(c), Jan. 3, 1983, 96 Stat. 2039, 2041.)

[1] So in original. Probably should read "an".

1983 Amendment. Catchline. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's".

Subsec. (a)(10). Pub.L. 97-409, § 6(a), added par. (10).

Subsecs. (b), (c). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsecs. (d), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 6(b)(1), substituted "except where not possible" for "to the extent that such special prosecutor deems appropriate" after "prosecutor shall,".

Pub.L. 97-409, § 6(b)(2), substituted "written or other established policies" for "written policies" after "comply with the".

Subsec. (g). Pub.L. 97-409, § 6(c), added subsec. (g).

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the

torney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 601 of Pub L. 95-521, set out as a note under section 591 of this title

Legislative History. For legislative history and purpose of Pub L. 95-521, see 1978 U.S. Code Cong and Adm. News, p 4216. See, also, Pub L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

District and Prosecuting Attorneys ⇐3(4).
C.J.S. District and Prosecuting Attorneys § 30

595. Reporting and congressional oversight

(a) A [1] independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel. These statements and reports shall contain such information as such independent counsel deems appropriate.

(b)(1) In addition to any reports made under subsection (a) of this section, and before the termination of a [1] independent counsel's office under section 596(b) of this title, such independent counsel shall submit to the division of the court a report under this subsection

(2) A report under this subsection shall set forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel which was not prosecuted.

(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

(c) A [1] independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(e) A majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a [1] independent counsel. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1871, and amended Pub.L. 97-409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039.)

[1] So in original. Probably should be "an".

1983 Amendment. Subsec. (a). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing

Subsec. (b)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's".

Subsecs. (b)(2), (c), (d), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 601 of Pub.L. 95-521, set out as a note under section 591 of this title

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

District and Prosecuting Attorneys ⇐3(4).
C.J.S. District and Prosecuting Attorneys § 30

§ 596. Removal of a [1] independent counsel; termination of office

(a)(1) A [1] independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel's duties.

(2) If a [1] independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b)(3) of this title and under the same limitations as apply to the release of a report under that section.

(3) A [1] independent counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

(b)(1) An office of independent counsel shall terminate when (A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the independent counsel files a report in full compliance with section 595(b) of this title.

(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by such independent counsel under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the independent counsel shall file the report required by section 595(b) of this title.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub.L. 97-409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039, 2042.)

[1] So in original. Probably should read "an".

1983 Amendment. Catchline. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's".

Pub.L. 97-409, § 6(d), substituted "good cause" for "extraordinary impropriety" after "and only for".

Subsecs. (a)(2), (c), (d), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the

Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub L. 95-521, set out as a note under section 591 of this title

Legislative History. For legislative history and purpose of Pub L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

§ 597. Relationship with Department of Justice

(a) Whenever a matter is in the prosecutorial jurisdiction of a [1] independent counsel or has been accepted by a [1] independent counsel under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a [1] independent counsel participates in an official capacity or any appeal of such a case or proceeding.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub.L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039.)

[1] So in original. Probably should be "An".

1983 Amendment. Pub.L. 97-409, § 7(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

§ 598. Termination of effect of chapter

This chapter shall cease to have effect five years after the date of the enactment of the Ethics in Government Act Amendments of 1982, except that this chapter shall continue in effect with respect to then pending matters before a [1] independent counsel that in the judgment of such independent counsel require such continuation until that independent counsel determines such matters have been completed.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1873, and amended Pub.L. 97-409, §§ 2(a)(1)(A), 7, Jan. 3, 1983, 96 Stat. 2039, 2042.)

[1] So in original

References in Text. The date of enactment of the ethics in Government Act Amendments of 1982, referred to in text, is the date of enactment of Pub.L. 97-409, which was approved Jan. 3, 1983.

Codification. The directory language of section 7 of Pub L. 97-409 incorrectly quoted the words being replaced by "after the date of enactment of the Ethics in Government Act Amendments of 1982". However the error is of academic interest only since it appears in the quotation of the language being replaced and not in the quotation of the surviving replacement language.

1983 Amendment. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 7, substituted reference to the date of enactment of the Ethics in Government Act Amendments of 1982 for reference to the date of enactment of this chapter.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

PART III—COURT OFFICERS AND EMPLOYEES

Chapter		Section
43.	United States Magistrates	631
51.	United States Claims Court	791
[53.	Repealed]	
55.	Court of International Trade	871

Amendment Effective April 1, 1984

Pub.L. 95-598, Title II, § 233(b), Title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2667, 2682, provided that, effective Apr. 1, 1984, the analysis of chapters comprising Part III is amended by adding

"50. Bankruptcy Courts ..... 771".

1982 Amendment. Pub.L. 97-164, Title I, §§ 121(g)(1), 122(a), Apr. 2, 1982, 96 Stat. 35, 36, substituted "United States Claims Court" for "Court of Claims" in item 51 and struck out item 53 "Court of Customs and Patent Appeals".

1980 Amendment. Pub.L. 96-417, Title V, § 501(13), Oct. 10, 1980, 94 Stat. 1742, substituted "Court of International Trade" for "Customs Court" as chapter 55 heading.

1968 Amendment. Pub.L. 90-578, Title I, § 102(a), Oct. 17, 1968, 82 Stat. 1114, substituted "United States Magistrates" for "United States Commissioners" as the heading of chapter 43.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 601. Creation; Director and Deputy Director

Federal Practice and Procedure

Records required to be kept by Administrative Office of the United States Courts, see Wright, Criminal 2d § 881.

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive redelegation of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(As amended Oct. 28, 1978, Pub.L. 95-539, § 5, 92 Stat. 2044.)

Alaska State Legislature

House of Representatives

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 6, 1985

Mr. Norman C. Gorsuch
Attorney General,
State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Sir:

This letter constitutes a formal request that you appoint either a special prosecutor or an independent investigator to determine if there have been violations of state law in connection with the activities in the North Slope Borough.

The activities in question include the transactions described in the Main Hurdman Compliance Report for the North Slope Borough Assembly, dated December 4, 1984. They also include the extensive reports which have emerged through the media, involving the same individuals who are discussed in the audit.

In Representative Fritz Pettyjohn's letter to you dated March 1, 1985, he inquired as to your position with regard to conflict of interest.

Specifically, he asked about the conflict which can arise out of your dual role as both the attorney for the governor, and as the chief prosecuting officer for the state of Alaska.

Daniel Hickey's letter of the same date and in response on your behalf, did not address these questions.

We feel the failure of your office to conduct an investigation before this date may be related to the fact that your client, Governor Sheffield, held a fundraiser in Seattle on May 16, 1984, at which the individuals and corporations named in the Main Hurdman audit contributed $52,000 to the Sheffield/McAlpine Committee, and that, two days later, your client received a check for $70,000 from that committee. The $70,000 went directly into his personal funds in repayment of a personal loan he had made to his campaign.

To say that your client's conduct was of questionable propriety is perhaps too delicate. As his attorney, surely you have advised him of the legality of his actions. As chief prosecutor for the state of Alaska, you are in a somewhat compromising position.

A similar situation occurred in the winter and spring of 1983, when questions arose about a fundraising trip you and your client made. You raised approximately $200,000 from oil companies and lobbyists, which again went into your client's personal funds in repayment of a campaign loan.

In response to the criticism of this conduct, Governor Sheffield stated that if an investigation into the fundraising trip was warranted, it should be conducted by a special prosecutor (Anchorage Daily News, March 5, 1983). Subsequently, an "independent investigator" was appointed and an investigation took place.

We suggest to you that the present circumstances are even more compelling than those which led to the appointment of that "independent investigator." After all, the oil executives and the lobbyists who contributed the $200,000 to your client were not engaged in the kind of activities which took place in the North Slope Borough by the contributors of May 16, 1984.

Although we have not contacted him, we would suggest retired Superior Court Judge Ralph Moody would be an appropriate person to be named either special prosecutor or "independent investigator."

Judge Moody's 22 years on the Superior Court bench and his untarnished reputation for integrity would make him a logical choice. He has served as the Democratic Majority Leader of the Alaska State Senate, and as Attorney General under former Governor Egan before his judicial appointment.

In a speech to the Anchorage Chamber of Commerce February 28, 1983, you stated that improvements were needed in the conflict of interest laws to clarify what actions by public officials and state employees should be prohibited. To that end, Senate Bill 501 was introduced at the governor's request on February 14, 1984. For some reason, no such bill has been introduced this year. We would be interested in the current position of the administration on this subject. In that connection, we are preparing legislation which would parallel Chapter 39 of Title 28 of the United States Code, dealing with the appointment of independent counsel to investigate alleged wrongdoing within the Executive.

We would appreciate any suggestions you might have in this regard.

In closing, we believe anything short of the appointment of someone of the stature of Judge Moody as special prosecutor or investigator, would not satisfy the public demand for a full and complete inquiry into the finances of the previous North Slope Borough administration. We urge you

to give this matter thorough consideration.

Cordially,

Rep. Fritz Pettyjohn

Rep. Drue Pearce

Rep. Virginia Collins

Rep. Andre Marrou

Rep. Alyce Hanley

Rep. Roger Jenkins

Rep. Robin Taylor

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 28, 1982

MEMORANDUM

TO: Representative Barnes

FROM: Leslie Longenbaugh
Research Staff

RE: Relationship of Elected and Appointed Attorneys General in Other States to Prosecuting Attorneys
Research Request Number 82-9

Bill Cook of your staff asked that we report on the relationship between state attorneys general and state prosecuting attorneys. Specifically, Mr. Cook asked that we survey other states in regard to their election or appointment of attorneys general and prosecutors, and the degree to which prosecutors are independent of the attorneys general.

In most states, both the attorney general and the prosecuting attorneys are elected. Most attorneys general head their states' justice or law departments but have few or no statutory responsibilities concerning the prosecution of either criminal or civil cases. When they do have prosecutorial responsibilities, attorneys general in most states prosecute only appealed criminal cases. The attorney general is charged by statute (AS 44.23.020) with, among other duties, prosecuting violations of State law. The attorney general appoints regional district attorneys to fulfill these prosecutorial duties, and he may remove these appointees from office.

Ruth Blau of the National Association of Attorneys General[1] informed us that most attorneys general are elected; Alaska is among the six states that appoint, rather than elect, their attorneys general. In Maine, the legislature appoints the attorney general; in New Hampshire, the governor appoints with the aid of the Executive Council, made up of county representatives who are not in the state legislature; in Tennessee, the state Supreme Court makes the appointment; and in Wyoming and New Jersey the governor appoints the attorney general.

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[2]Ruth Blau, Publications Director, National Association of Attorneys General, Washington, D.C.; telephone: (202) 624-5454.

According to Ms. Blau, states that elect their attorneys general usually require that the candidates be lawyers and United States citizens; some require two to ten years' residency in their states, and some two-thirds of all states require that attorneys general be of a minimum age. In thirty-seven states, candidates for attorney general must have passed the state bar examination.

The method used in New Jersey in selecting attorneys general and district attorneys is closest to that used in Alaska. As in this state, both attorneys general and district attorneys are appointed rather than elected; the major difference in New Jersey is that the district attorneys are appointed by the governor, rather than by the attorney general, and are subject to approval by the state senate.

Voters in Pennsylvania recently amended their state constitution to allow election, rather than appointment, of their attorneys general. After the constitutional change, a committee of interested attorneys, legislators and other citizens was appointed to decide how best to make the change smoothly. The elected attorney general may serve two consecutive terms of four years each; the election is held in the middle of the gubernatorial term.[2] The constitutional change in Pennsylvania broadened the attorney general's prosecutorial powers. Also, Ray Zimmerman, the state's first elected attorney general, was a district attorney before his election as attorney general. The new attorney general has made a commitment to cooperating with locally-elected district attorneys in investigations and prosecutions. Like his counterparts in several other states, Mr. Zimmerman has established a special office that helps local prosecutors with their investigations.

In the eastern states of Delaware and Rhode Island, attorneys general are solely responsible for prosecution of all criminal and civil cases, just as is the Alaska attorney general. The National Association of Attorneys General presumes that the two states do not have separate local district attorneys because the states are so small.

The attorney general in Ohio has no prosecutorial duties at all, even in instances of appealed criminal convictions. The attorney general in Ohio thus has little contact with the district attorneys, who are elected locally.

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[2]Robert Gentzel, Assistant Press Secretary, Office of the Attorney General, Harrisburg, Pennsylvania; telephone: (717) 787-3391.

We also spoke with Tom Hinton of the National District Attorneys' Association[3], who informed us that prosecuting attorneys in most states are elected from within the county, election district, or other area they serve. According to Mr. Hinton, only in Alaska, Connecticut, and New Jersey are district attorneys appointed rather than elected.

Several states make a distinction in jurisdiction between criminal and civil prosecutions. In Texas, for example, the elected "district attorneys" prosecute only criminal cases, while the also elected "county attorneys" may handle both civil and criminal prosecutions.

Some of the minimum qualifications for elected prosecuting attorneys vary widely from one state to the next, although almost all states require that candidates be trained attorneys.

Mr. Hinton stated his belief that a change to an elected attorney general could compromise the integrity of the district attorneys in Alaska, if the attorney general remained charged with their appointment. An example of such a conflict is the possibility that district attorneys' prosecutions sometimes would become entangled with the attorney general's desire to win reelection. He suggested the following methods of selection, both of which he feels would maintain the prosecutors' integrity.

- gubernatorial appointment with approval by one or both houses of the state legislature, a method which would maintain control of prosecutors at the state level; and

- popular election within the regions they serve, a method which would offer the local citizenry more direct control over its prosecuting attorneys.

Mr. Hinton stated his conviction that California has the "most efficient" criminal justice system. The popularly-elected attorney general heads the state department of justice, which performs criminal justice planning and renders legal advice to state government agencies and officials. The attorney general usually has only incidental relations with the locally-elected county district attorneys, who prosecute all civil and criminal cases during their four-year terms of office. The California attorney general and district attorneys may be impeached and removed from office by the state legislature.

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[3]Tom Hinton, National District Attorneys' Association, Virginia; telephone: (703) 549-9222.

Mr. Hinton has sent us a copy of his organization's 1979 review of all states' methods of selecting district attorneys. When these materials arrive we will forward them to your office.

Please call on us if we can be of further assistance.

LL:dlp

MEMORANDUM

TO: Representative Rick Uehling
FROM: Bill Lovell, Staff
DATE: May 27, 1983

RE: Attached letter

Your office received the attached letter and revised fiscal note from Senator Fischer's staff this afternoon.

We could request a new fiscal note from some other source if you want.

/wtl

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.

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 (Richard I. Pegues) Phone: 465-3672
Division: Administrative Services Division Date: May 26, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General (Richard I. Pegues / for) 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)

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

Little History on A-G's.

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

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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.

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).

Little Heston on
A-G's.

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

Ak. Con. Con. Proceedings;
Part 3

Subject: Attorney General

on a matter that is far removed from Convention business.

PRESIDENT EGAN: Mrs. Hermann, if there is no objection.

(Mrs. Hermann spoke on a matter of privilege.)

PRESIDENT EGAN: Thank you, Mrs. Hermann. Did we have two reconsiderations of amendments that had been adopted, pending or was there one? The Chair only brings it up at this time inasmuch as it might be best if we consider any reconsiderations on this proposal as quickly as we can. That is, it would be up to the maker of the motion actually, but were there two reconsider tions or one?

CHIEF CLERK: One, I think.

PRESIDENT EGAN: If the Chair remembers it, Mr. Kilcher I think reconsidered on the last proposed amendment, but I had the feeling there had been another notice given during the day. If not, we will continue. Mr. Victor Rivers.

V. RIVERS: I have an amendment.

PRESIDENT EGAN: You have an amendment by the Committee?

V. RIVERS: By a minority group of the Committee, myself and Mr. Harris.

PRESIDENT EGAN: Mr. Victor Rivers, you may present your proposed amendment. The Chief Clerk may present the proposed amendment.

CHIEF CLERK: "After Section 14, page 7 of Committee Proposal No. 10/a, insert a new section as follows: 'Section 15.

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Are there copies available for the delegates? Is there a second to Mr. Rivers' motion?

HARRIS: I second the motion.

PRESIDENT EGAN: Mr. Harris seconds the motion. The matter is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, this matter of the office of attorney general came up for a good deal of discussion in connection with the strong executive and in connection with the matter of having some screening for the man who would be the attorney general. Some of the Committee felt that it would interfere with the strength of the executive. Others of the Committee felt they wanted to see the attorney general elective and not removable by the governor. It seemed that the only thing that was of main concern to a great many of us was that while we recognize the value of the strong executive, we are not naive enough to think that the governor who is elected will not have certain obligations, commitments, endorsements to meet when he goes into office. We realize that on all the other department heads there may have to be on his part some compromise with his desires under this plan as we have it. We did, however, want to try to eliminate any matter of the return favors or endorsements or obligations to the man who he appointed as attorney general. We are trying to remove that particular office by a screening process we have set up here, so the man who went in there, his appointment would be based on merit and not on any other consideration. As you will note, we have recommended that the attorney general be screened by the Legislative Council in regard to his qualifications, that two or more be screened in accordance with the requirements to fill the job satisfactorily both on the basis of qualifications and on the basis of the governor's desires. The only intent in this is that the attorney general shall be one who is appointed not from the point of view of any obligations from the governor to him, and also the other intent is that the attorney general cannot be removed by the governor without also the approval of the legislature meeting jointly as they approved the appointment of the attorney general at the time he was actually put into office. He would be removed in the same manner, and by that manner only. There has been a good deal said here about diluting the power of the strong executive. I am of the opinion that perhaps a governor going into office where he had to make a large number of appointments, where he had been supported in his campaigns by many individuals who might be men of high degree of competence or average competence, I would be of an opinion that a governor in that position would probably welcome the possibility of the chance of appointing one office in such a manner that he would not have to repay any obligations or indebtedness or favors in that particular appointment. I for one feel the attorney general's office should have removed from it the need for making any concession to competence or qualifications because of political support on the part of the applicant to the governor in seeking election. That is my opinion and I feel there is sound justification for that opinion. I realize there are many divergent opinions here on that subject.

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

BUCKALEW: Mr. President, from the beginning I would like to state that I don't like this proposal. The first objection I see is that we are shoving off on the judicial council a function that is not one of their duties. The judicial council was created by Mr. McLaughlin's department. He set up a judiciary. Now we are going to let Mr. McLaughlin's department select an attorney general. Not only does the attorney general have to be approved by the judicial council, the attorney general then has to be approved by the legislature. If the governor wants to remove him he has to get the consent of the legislature. Now, I don't think this matter would even have come up if we had not discovered that the initiative and referendum article referred to the attorney general. The reason I bring that up is that I think Mr. Sundborg had an excellent suggestion that we just insert the words "secretary of state". That is probably one of his functions. That is the only reason I think this business came up. We decided yesterday that we were not going to elect the attorney general. The argument put up by the Committee was they wanted to have a strong executive and today they are going to water it down a little. I think we ought to be consistent and vote this amendment down.

V. RIVERS: I rise to a point of order. I stated this matter had been discussed some time ago in Committee. It did not arise yesterday. This amendment was prepared during the time of that discussion. I also object to referring to any department of this constitution as being the department of some one individual. I don't believe it is either Mr. McLaughlin's or mine or anybody else's; it is the constitution of all the people of Alaska.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I was going to correct Mr. Buckalew, but since Mr. Rivers has already done so, I will only state that I would favor this amendment. We talked about this quite a bit in Committee, and it is a check on the governor. It makes a bit of difference when the attorney general's word becomeslaw. It actually is law, unless it is disputed in court and found to be not exactly as it is supposed to be, then it is used as law. Therefore, we feel the attorney general should be a qualified man and in order to insure that his qualifications are up to par we needed some type of screening process. Now, we did not screen the man because we wanted to connect him with the judicial department as Mr. Buckalew suggests. The only reason for using the judicial council we feel is that the judicial council is qualified to screen the attorney general. Therefore, that was the reason for bringing up this amendment.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I agree with Mr. Victor Rivers that the judicial

council is not the idea that it was limited to one person; it was the product of the Judiciary Committee's combined thought. I am personally opposed to such a method of selection. Within my knowledge there is only one equivalent method of selection of the attorney general, and that is probably in New Hampshire where the attorney general is selected by the justices of the supreme court. I believe that Mr. Buckalew is right in that he says that the attorney general is not otherwise mentioned in the constitution except in the initiative and referendum, and if you can recall, the only reason he was mentioned in the article on the initiative and referendum was originally they had a proposal as it came out of committee, my recollection is, that the 10 qualified voters could submit a proposition to the attorney general, and secure his opinion as to its legality. That is why the attorney general was mentioned. We chopped the portion requiring an opinion of legality from the attorney general, we chopped the portion, if I recall, requiring review of his opinion, and in substance what we did is we made it a function as it stands now, the true function of the secretary of state. The attorney general is in there by happenstance and no other reason. Yesterday we determined that the attorney general should not be elected and implicitly what we determined was it should be within the discretion of the governor subject possibly to confirmation that the governor alone in his discretion would select the attorney general and would be responsible for him. The attorney general, apparently, under the concept that we have implicitly accepted, is an attorney largely for the executive department. In any event, he is a political appointee, he is an executive appointee. I don't believe that we should be putting him through a means test and running him in substance through the judicial council. Under such circumstances, the governor may well say when the attorney general proves unsatisfactory to the electorate at large, the governor should have the direct responsibility, he should not be able to evade it by saying, "It was not my selection." I am opposed to it. The judicial council was designed in the constitution deliberately for one reason. That was for the selection of the justices of the superior and supreme courts, when in substance we are now utilizing them to provide a rather cathartic attorney general. I think that this is a mere compromise, it is not a majority opinion of the Committee on the executive and certainly it has not been considered by the Judiciary Committee. I cannot speak for them, but I feel sure that the majority would feel the same way. Our choice is not a compromise. He is either elected or he is appointed. If he is appointive and if he is going to be one of the consorts of the governor and one of his confidants, he should be selected directly by the governor and the governor should be responsible. If we accept this, then in premise we should accept a screening of every other public official appointed by the governor in his cabinet. I believe the attorney general, if he has to be mentioned, and I don't think it necessary, I don't think he should be embodied in the constitution. The attorney general should be like the attorney general of the

United States, appointed by the executive and the executive is responsible for him. This is, frankly, I think on its face, a compromise measure and I believe the attorney general is without our sphere, and in substance should not even be mentioned in the constitution, let alone nominated by the judicial council.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: May I ask a question of Mr. McLaughlin? Would we gather from your statements that the judicial council is limited only in its purpose to the selection or the recommendation of judges?

MCLAUGHLIN: That is not so, Mr. Rivers, because we have a specific provision in there saying that they shall perform such other duties as are provided by law. I am sure it was the intent of the Convention that their functions would be limited to the judicial. In fact, I think by error you did remark that the attorney general was selected by the Legislative Council when you supported this matter, but I would oppose it just as I would oppose the judicial council selecting the sites of the court houses. I think they are participating now in the executive functions of government and I believe the judicial council should be limited as it has been historically to judicial affairs and not to executive affairs.

V. RIVERS: Do you agree with the judicial council in the matter of screening this man as to qualifications, would be doing the same thing as if he were screening a judge? Isn't it for qualifications and to remove the judge from direct political election or appointment that we put up the judicial council? Isn't the process of screening identical in the two cases?

MCLAUGHLIN: Yes, the process of screening is identical except for this one thing. A judge is supposed to be dispassionate. He is not supposed to be acceptable to the people who appear before him. In the case of the attorney general the attorney general will have a client-attorney relationship to the governor and frankly I believe the governor should have wider choice and discretion. It is like selecting the presidential physician by vote of a selection board. The relationship is something that is intimate, and there is an intimacy of relationship that does not exist between the judiciary and the general public. We are selecting an attorney for the governor and saying, that's it, without regard to personality or anything of the sort.

V. RIVERS: I would like to ask another question, and that is, do you think the attorney general should also be removable at will by the governor at any time after he has been appointed and confirmed?

MCLAUGHLIN: I think that is so, yes.

V. RIVERS: Do you think the attorney general represents the people of the Territory in the matter of his interpretations of law, or does he represent the administration? I realize the interests at most times are coincidental and the same, but at times when there is any divergence would you also say he represents the people?

MCLAUGHLIN: Frankly, I think the attorney general represents the executive department of the government.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I cannot follow the reasoning either of Mr. McLaughlin or Mr. Buckalew. I think the screening set up in this proposed amendment to Article 10/a is I think a happy choice. It may be a compromise, but I think it is a very fine compromise, in between the two propositions that have been advanced in choosing the attorney general. I believe the judicial council is the proper body to, what you call, screen the attorney general. The duties if given to the judicial council will be the same as they are in regard to the justices of the supreme court and the judges of the superior court. It is to select a competent lawyer to fill the office of attorney general just as they are duty bound to select the best men they can for judicial office. The office of attorney general is a very important office. There has been numerous times in the history of the Territory of Alaska when we have had an extremely weak attorney general and the Territory has suffered by it. If we have a capable attorney general I think we will be a great deal better off if the attorney general is vigorous and follows out the instructions of the governor in fulfilling his office. I feel the attorney general is only, his duties should primarily be the attorney for the executive branch of the state government. In the past there has been times that the attorney general has had to be the legal officer for the executive, Legislative Council,and the counsel for all departments of the Territory. That was extremely a difficult position. I know Mr. Rivers had it for a number of years and he can explain, perhaps better than I can, the difficulties of filling of positions such as that, but I believe primarily the attorney general is the attorney for the governor and the department heads, the departments established by this constitution and who would be under the direct supervision of the governor. I feel that some provision maybe should be made here or the legislature should make one for the employment of a legislative counsel during the sessions of the legislature, and so the attorney general would not have to take a part in that particular matter. I feel that the adoption of this amendment with the governor being given the right to remove the attorney general without the consent of the legislature would be a happy choice.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it seems to me from the arguments

we have heard that probably we are going at this backwards. The arguments have been as to how we should select an attorney general. Now it is my thought on the basis of the bill that we have here that probably what we want to decide is whether we want a constitutional attorney general or not. It seems to me on the executive department, as we have outlined it here so far, that we probably don't want a constitutional attorney general at all; that that matter should be left to the legislature as to whether we do or don't and to what his powers are when the legislature decides to set up an attorney general, and accordingly it seems to me pointless to discuss as to how the attorney general is to be selected. If it is wise in the view of the legislature when they set up an attorney general that he should be screened by the judicial council, these arguments could be made at that time, but at the minute we have not mentioned an attorney general, and it seems to me that the executive department is going to be a whole lot more what the Committee had in mind if we don't set up an attorney general as such in this article. Now I realize that if we don't set up an attorney general we are going to have to do something to the initiative, but that is a different problem and no problem from my standpoint.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: It has been said that perhaps we could omit mentioning an attorney general in this article and that the secretary of state could take over the function of the attorney general with regard to the initiative and referendum. In the initiative and referendum article we said that the initiative should consist of a petition with a proposed bill that the sponsors wished to have made into law and that the attorney general would scrutinize it as to sufficiency for form and the attorney general would condense the matter for appropriate petition heading so that the people that sign it would have an adequate draft as to what they are signing. Afterwards the attorney general shall prepare the ballot title, assuming that enough signatures were obtained and that this bill were to go before the voters. It is a little difficult I think for the secretary of state to engage in all of those legalities, and I think as far as the initiative and referendum is concerned, we ought to have that in the hands of the attorney general just as the initiative and referendum article suggests. However, I see difficulties with this proposed amendment. The judges are banned from politics. They are picked on an absolutely nonpartisan basis. The attorney general presumably should be a member of the same party as the governor. The attorney general, if he is a member of the same party, as attorney general, would take the normal part in politics, but if he is picked on a nonpartisan basis as the judges are, then we have to ban him from engaging in politics and he also could turn out to be somebody of the opposite party. So I believe we are getting crossed up if we try to put the attorney general through legislative council. I think we are getting -- the judicial

council I mean -- I think we are getting the judicial council into some little difficulties, etc., and from the political standpoint we want to keep them out of it. They can't hold any position or be active on the political scene. So if this particular amendment does not pan out, I am going to propose one as follows: The department heads appointed by the governor shall include an attorney general. Then we can leave the initiative and referendum functions right where they are.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, as it has been mentioned, this is a minority report from the Committee, and I think it is only right you hear from some of the rest of the Committee regarding this. We in our Committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the state's functions would be successful we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election. Mention has been made not only here on the floor but also the same argument in the Committee that the governor would have certain obligations and would be expected to lean toward that obligation in the appointing of an attorney general, but I can't help but feel that that same trend of thought would run right down through the other departments, and I believe that there are other departments under the governor that are of equal importance and if the governor is going to bow to party obligations or other obligations in selecting of the attorney general, he will do the same thing all the way through his other department heads, and we won't have a man in there that we can be fully proud of, and I think we are going to want to elect a governor who will be able to stand on his own two feet and appoint the men that he feels should be in the office. I think if he is that type of man he will not only be respected by one party but by all of the people of the state. As far as the removal is concerned, if we worry that the governor may remove the man at will, if that is not best, we can always insert that he be removed with the consent of the legislature, that is another matter, but as far as the appointing is concerned, I think that is vital right now. As far as screening is concerned, I can see that it might have been good in the past to have the nominations for attorney general screened some way before they even face election by the people. Be that as it may, I think if we elect a governor it is his duty to screen and select a good attorney general. That is part of his job. We are electing him to do that very thing, and if he fails to select a good attorney general then he is that much more a failure as a governor, and he will stand that test in the coming election. If we feel that the attorney general must be screened so that we have the best possible attorney general, I think it is also

necessary that the head of the department of education, head of the department of welfare, health and labor, and all the other department heads be screened by somebody so that this governor gets the right men in his cabinet, so to speak. I certainly feel that he should be able to screen and select a good attorney general as well as select the other department heads. But I think there is one thing that is even more important and we discussed that in the Committee, and that is the matter of compatibility. We have felt in the past that we have not had attorney generals who have been entirely in sympathy with the governor and it has been due to the way the two have gotten to their office. We elect the one and the other is appointed out of Washington, and we have seen certain cases where they have not worked out in harmony. Now, if the attorney general is to represent the people alone, then of course he should be elected, but as he is to work under the executive department we want a man who is compatible with the governor and with his type of program that he wants to put over in the state, one that understands the governor, one that will work with the governor and ask the judicial council as set up, not to honor party politics but to work in a nonpartisan capacity. Yet I feel they will not be able to do that as far as the attorney general is concerned, and I don't believe there is any more reason to feel that a judicial council nominee would be any more compatible than one elected by the people of the state; if they are going to ask the governor, "Will this man work with you or will that man work with you, do you want this one or that one?" You might as well say, "Let the governor pick the man in the first place." If they are going to have the liberty to put up a man that will not work with a governor, then we spoil our whole plan for an effective administration. I believe, as Mr. Ralph Rivers mentioned, if we want the attorney general's office mentioned at all in the constitution, it would be very simple on Section 16, line 14, after "department" to insert the words "including the attorney general's office." That would make it very clear that the governor would have the appointive powers and that the attorney general's office would be one that he would have direct control over. That gives you, I believe, some of the Committee thinking regarding the attorney general being appointed by the governor.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I would like to ask Mr. Rivers a question, if I may. Mr. Ralph Rivers, are the services of the attorney general available to the secretary of state in case he needs them?

R. RIVERS: Yes.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I would like to ask Delegate Rivers a question through the Chair, if I may.

PRESIDENT EGAN: You may ask your question, Mr. Buckalew, if there is no objection.

BUCKALEW: Mr. Rivers, I notice that the proposal, that the caption is by Delegate Rivers. My question was whether this was a committee proposal or your separate individual proposal?

PRESIDENT EGAN: Mr. Rivers has already answered that question, Mr. Buckalew. He said that it was actually a proposal of his and of Mr. Harris. Mr. Victor Rivers.

V. RIVERS: In closing this discussion, I will make it brief. I just want to say, in my opinion it is no compromise opinion. If it had been a compromise we would not have this discussion on the floor. It has been pointed to as a compromise. Those of us who submitted this proposal honestly and actually think the attorney general should be screened. Now I wanted to clear up a point that Mr. McLaughlin made. He pointed out that certain appointive methods were used in the State of New Hampshire. They are. The attorney general is appointed by the governor and a council of five. In the State of Tennessee the attorney general is appointed for a period of eight years by the justices of the supreme court. In four states, as I am able to count, the attorney general is appointed by the governor by and with the consent of the legislature. In three states the attorney general is appointed by the governor and in the balance he is elected by the people. So if you add that up you will find about 38 states in which he is elected; in these two states I have mentioned, Tennessee and New Hampshire, he is appointed under a similar plan, and in the balance of the states he is appointed by the governor with or without the approval of the legislature, as the case may be. It is my thought, and I have observed this rather closely from some contact with the legislature, that while the attorney general is in essence not a judge, he does interpret the law which governs people until somebody challenges his interpretation, and then his decisions oftentimes and most of the time do have the force of law until they are upset or turned over or otherwise disturbed by having somebody appeal to the courts. It does not seem to me to be a bit out of line that the attorney general should be properly screened as to competence, and in the selection of the attorney general the governor should be relieved of the obligation to repay any favors or to make any particular discrimination in favor of any individual. It has been stated here that we tie the hands of the strong executive. Read this amendment over again. It does not say who the governor shall appoint. It says, "Two or more shall be screened by the judicial council and submitted to the governor for his appointment." He is not limited to the one man or two men or three men. If he can't make his choice he might even have four men, but he does have any obligation removed in making that appointment to any individual. It would be entirely free of a political aspect insofar as it affected the attorney general's competence. There is nothing in here that is counter to common practice, I refer

to the State of New Hampshire, the State of Tennessee, and others, but it costs you money if you go to court to upset an attorney general or any other similar official's opinion. That opinion as I have seen it many times, that opinion has the force of law and interpretation of any laws the legislature may have passed. While you might not view him as a judge, in essence he is a judge of what that law says until it's determined otherwise by the courts. In essence he is a judge of what certain things do that apply to the people. For that reason I think that he should be screened as to competence. I see nothing in that which weakens the strong executive. The governor might say of the first two appointees named, "I am unable to make a choice; submit me another name." There is nothing that stops him from doing that in the proceedings of the council. It seems to me that some determination which would relieve this office of having to be filled by any repayment of political favor or obligation should be set up, and that is why we have introduced this amendment. It is no compromise.

PRESIDENT EGAN: Mr. Victor Rivers had stated he was closing. No one objected. Unless there is someone who has not spoken -- Mr. McLaughlin.

MCLAUGHLIN: I wanted to ask Mr. Rivers a question. Mr. Rivers, when you say the council in New Hampshire, you mean that five elected executive council who are elected by the people together with the governor?

V. RIVERS: I stated the council of five. The council of five is elected for two-year terms along with the governor and they determine with the governor the appointment of the attorney general.

MCLAUGHLIN: But that is not a judicial council at all, is it?

V. RIVERS: I don't know what their duties are. They are a council of five, but whether they are constituted as ours is, I do not know.

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

HARRIS: I request a roll call.

PRESIDENT EGAN: Mr. Harris asks that we have a roll call. The Chief Clerk will call the roll on the question.

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

Yeas: 18 - Barr, Collins, Cross, H. Fischer, Harris, Hinckel, Kilcher, Metcalf, Nerland, Nolan, Peratrovich, Reader, V. Rivers, Robertson,

Rosswog, Smith, Taylor, VanderLeest.

Nays: 36 - Armstrong, Awes, Boswell, Buckalew, Coghill, Cooper, Davis, Doogan, Emberg, V. Fischer, Gray, Hellenthal, Hermann, Hilscher, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nordale, Poulsen, Riley, R. Rivers, Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 1 - McNealy.)

CHIEF CLERK: 18 yeas, 36 nays, and 1 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 14? Mr. Ralph Rivers.

R. RIVERS: I have an amendment.

PRESIDENT EGAN: Mr. Ralph Rivers, you may offer your amendment. The Chief Clerk may read the proposed amendment.

R. RIVERS: May we have about a two-minute recess? I would like to consult with Mr. Londborg.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk will please read the amendment as proposed by Mr. Ralph Rivers.

R. RIVERS: It hasn't been introduced yet, I was going to withdraw it.

PRESIDENT EGAN: No, it has not been introduced.

R. RIVERS: I won't even do that.

PRESIDENT EGAN: Are there amendments to Section 13 or 14 or 15? Mr. Sundborg.

SUNDBORG: Mr. President, I have a question about Section 14. May I be permitted to address it to Mr. Rivers?

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

SUNDBORG: Mr. Rivers, I am a little bit bothered about these

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signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

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

BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

BARR: Mr. President, as this is rather a long amendment --

PRESIDENT EGAN: The Chair would like to make an announcement at this time, before you proceed, Mr. Barr. The News Miner just called and Guy Rivers, brother of Vic and Ralph, was found alive and safe about 30 minutes ago. (Applause) He has been picked up and is now on his way back to Fairbanks. Mr. Barr.

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semijudiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

PRESIDENT EGAN: Any further discussion? Mr. Marston.

MARSTON: Mr. President, if my recollection is right, in the past 14 years that I have definite recollection of, there have been only two attorney generals and the reason is that they just can't get attorneys to run for that job. I'd want to know that there are attorneys that will step up and lend themselves to be elected to that job before we pass on this. I have no argument with the mover of this amendment, Mr. Barr, except that is information that I would like to have. Maybe we have some lawyers here that could enlighten me on that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I think I could answer that. All the lawyers that favor the amendment will probably stand up, and those who don't will sit down. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the proposed amendment? Mr. Nolan.

NOLAN: Mr. President, at a meeting that I had, I think there were 12 people there on an hour and a half's notice, that was the one thing they were unanimous on. They wanted the attorney general elected by the people. They seem to think it was the one independent arm that they would have, and for that reason they were unanimous that the attorney general should be elected, and therefore I think I will support Mr. Barr's amendment.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

providing for the election of a commissioner of labor. If we yield ground 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. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. 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. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's 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. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that 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 faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I be allowed to close?

PRESIDENT EGAN: If there is no other person who wishes to be heard. Mr. Stewart.

STEWART: Mr. President, may I ask Mr. McLaughlin a question?

PRESIDENT EGAN: You may, Mr. Stewart.

STEWART: Is it your idea that the attorney general, as such, he is or should act as the counsel for the legislature, as well as for the executive?

McLAUGHLIN: He should, in substance, act as counsel for the legislature. In many respects, you also have the unusual circumstance where the attorney general is of one party and the legislature is predominantly of another party.

STEWART: He may have to give decisions in one case that might favor the executive and in another case might favor the legislature?

McLAUGHLIN: That's right.

STEWART: I think that is an unwholesome situation, and should be corrected by having the attorney general purely and simply the adviser for the executive.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this has developed to the point where I want to say a few words. I wasn't going to, but when I was attorney general, that office was legislative counsel for the legislature, advised the members of the legislature, advised the various administrative departments under the governor, and advised the governor, and wrote legal opinions interpreting the law. Since that time the legislature has created a Legislative Council, that Legislative Council has a political scientist in charge, Jack McKay. It could very well have a lawyer and is authorized to engage any legal services that may be required. The legislature has full power to hire all the legal assistance it needs during the sessions so that I believe that Mr. Stewart's thought is well taken, that the attorney general will be the attorney for the executive arm of the government and that if we have the governor appoint an attorney general, he is not going to be the adviser to the legislature nor the drafter of legislative bills. Now, he may draft proposed legislation for the administrative departments. If the department of health wants a bill, the governor will tell the attorney general to get out a good bill or the commissioner of health, or as the case may be. They'll fall back on the attorney general for some bill drafting

for the governmental departments, but the legislature from now on and under this setup, is not going to have the attorney general doing its bill drafting. It's going to have its own legal counsel. The present Attorney General, because of the press of business, gave up being legislative counsel for the legislature three years ago and told them they were too busy and were just looking after the executive department, and that they were to figure out how to get their own bills drafted. Two years ago that situation got so acute that the Legislative Council was created and it serves a very useful need, but I think that Mr. McLaughlin actually emphasized the wrong answer when he said that the attorney general would be the counsel for the legislature as well as for the executive arm, because under the present development with Legislative Council, he will be the attorney for the executive branch and the legislature can take care of itself. I might also say that I wrestled with this, I started out advocating that the attorney general be elected, but I wrestled with it, I told Mr. Barr that I felt the way he did four or five days ago. Because of my doubts though, I have talked to many people, they have said if you are going to let the governor's administration be held responsible for the conduct of that administration, you have got to at least give the governor an attorney of his own choice. Under this setup he might get an attorney of the opposite political faith. He might get one of his own party who is either inadequate or who is hostile to him, or who doesn't see eye-to-eye with him. In either case, the governor could say at the end of his term, if things haven't gone well, "We had a good program but that attorney general you foisted upon me wrecked our program." There again, you have got passing the buck as to who was to blame because things didn't go well. Now then, if we want to be sure that the strong executive who is going to have the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I don't intend being an applicant for the position of attorney general either by appointment or election, but I don't quite see Delegate Marston's point that there are no attorneys in the Territory who are willing to run to be elected attorney general. I can't see how there would be any attorneys who would be willing to accept the appointment. I support Mr. Barr's position in this matter. I, too, am in favor of a strong executive, but I don't think that the mere fact that because under the appointive system of governorships that the governor virtually has no powers, that we should let that carry

us too far away. I think that it is a good thing for the people, to have their own elected attorney general who can check the legislation which the governor proposes to introduce and have introduced, and for that reason I am going to vote for this amendment.

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: I was also going to answer Colonel Marston much as Mr. Robertson did. If lawyers aren't available, they aren't available period. Mr. Rivers was talking about an entirely different thing. He mentioned our present Legislative Council. There is not a lawyer in charge. They do draft bills for the legislature. They have taken over a duty which the attorney general formerly did, that is as it should be. There is a lot of detailed work there, but it isn't legal work. If the legislature wants to ask a legal opinion, they will not go to our political science experts, they will go to the attorney general. Now he also stated that if an attorney general of the opposite political party were elected, the governor could pass the buck and say, "Well, you people see what you saddled me with here. I couldn't do anything. He wouldn't let me." Well, if there was an attorney general of the opposite political party there, he would make the governor toe the line pretty well as far as the law was concerned. All the governor could say to the people is, "You see that attorney general, he made me conform with the law." That's all this is designed to do. It isn't supposed to restrict his actions otherwise, just to conform with the law. Now, as Mr. McLaughlin said, because he was the legal counsel for the governor period, that this would not accomplish any particular purpose. It will accomplish several purposes. It is up to you people to decide how important they are. It might provide a little brake on the governor if he wants to go too far. If he wants to over-step the law just a little bit, but the principal purpose it has, the principal objective it will achieve is that it will allow the people to have more hand in the government and that is what we want.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I request a roll call on this vote and will raise my hand to indicate that request. Under these rules, 10 people have to --

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

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

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

Yeas: 12 - Barr, Collins, H. Fischer, Laws, McNealy, Metcalf, Nolan, Robertson, Smith, Sweeney, Taylor, Walsh.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Stewart, Sundborg, White, Mr. President.

Absent: 3 - Coghill, VanderLeest, Wien.)

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

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

BARR: Mr. President, I had another amendment which I had intended introducing providing for the election of a commissioner of labor. I would just like to state that the reason for that was that without destroying the powers of a strong executive, I thought the people would like to have a number of officials elected someplace between the number of two and four, but I can see that this body does not believe that that should be done.

McCUTCHEON: Point of order, Mr. President.

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

McCUTCHEON: Isn't Mr. Barr speaking to a matter of personal privilege?

PRESIDENT EGAN: Do you ask to speak on a matter of personal privilege, Mr. Barr?

BARR: Yes, I will, if the tape is left on.

HURLEY: I'll move that Mr. Barr be allowed to speak on a matter of personal privilege.

Alaska State Legislature

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THE STATE LEGISLATURE IN COURT

Representative Terry Martin

In most states, the legislature relies exclusively on the state attorney general for legal representation. In fact, state laws often require this. However, because the Attorney General in Alaska is appointed by the Governor rather than elected by the people, our legislature must often turn to private counsel for advice and guidance when conflicts arise with other branches of government.

Today in Alaska, there is major concern as to how the Legislature may address confrontations with other agencies of State government. It is most logical to look to our Courts. But, as every citizen knows, litigation is expensive. Thus the Legislature must appropriate money for lawsuits, especially when there are differences in interpretation of our Constitution.

Although the Sheffield administration opposes the appropriation of State funds for hiring lawyers to represent the Legislature, two years ago a precedent was set for this type of action. At that time the Legislature took to court--and won--a dispute between the Legislative and Executive branches over powers of appropriation. Ironically, the law firm hired by the Legislature to defend that action was Ely, Guess and Rudd, which was then the firm of the current Attorney General. So the same person who previously received Legislative appropriations for legal work is now stating his concern about the legality of such appropriations.

Is the current lawsuit necessary? Perhaps the questions should be, "Is a citizen, once elected to public office, any less protected under the Constitution, and any less deserving of his guaranteed inalienable rights, than the average citizen?" Was it proper to arrest and forcibly detain legislators simply because they chose not to attend a meeting?

Article I, Section 7 of the Constitution of the State of Alaska, states, "...The right of all persons to fair and just treatment in the course of the legislative and executive investigations shall not be infringed." What crime was committed by those legislators arrested by order of the Governor?

Article I, Section 13: "The privilege of the writ of habeas corpus shall not be suspended..." This is every citizen's basic protection against illegal restraint or detainment in another's custody. By what conceivable authority was this Constitutional right denied the arrested legislators?

As an elected official, I have sworn to uphold the Constitution of this State. I will go to the defense of any person, including a legislator, who is arrested illegally.

In Alaska, the Legislature is vulnerable to Executive power when trying to defend its stands. Legislators cannot depend on the Attorney General, for that is a position appointed by the Governor. The Legislature does not have an established legal counsel to defend its actions, as other states do. So the Legislature must be prepared to use the courts as a sword as well as a shield to assure that its rights as an equal branch of government are protected.

There was intended to be a healthy exchange among the Legislative, Executive and Judicial branches of government. Fighting in the Legislative chambers and arrests in the halls of the Capitol over conflicts of

interpretation of the Constitution can be extremely destructive. The courts are the logical place to settle these disputes.

If the Governor is ready to arrest legislators in order to force compliance with his desires, what is to prevent him from arresting any citizen to force that person's attendance whenever the Governor wants an audience?

I recall reading about a judge in another state who did not have enough jurors to hear a case. The judge felt that the case should be heard without delay, so he directed his bailiff to go out into the street and bring back people to sit on the jury. The bailiff did just that. Without a summons or any kind of notice, people were arrested--in a supermarket, at stop lights, even two men on the street who were obviously drunk. Of course, these citizens challenged the judge's right to arrest them and force them to be jurors. As you would expect, the people won their suit. But this is a good example of how power can be twisted and abused by one person who feels that his priorities must be met, even at the expense of the rights of others.

If the Governor feels that legislative confirmation of his cabinet appointments is an unfair requirement, he should introduce legislation to bring the issue to a vote by the people. This is the proper way to bring about changes to the Constitution. The chances are good that such an amendment would be strongly supported by voters. Many people with whom I've spoken take this position, stating that the Governor should sink or swim by his own actions and his own people, without involving the Legislature. I happen to agree. This would enhance the separation of powers between the two branches of government, and help reduce some of the tension and abuse of power that we have witnessed.

In any case, the only place to reasonably and finally decide whether the Governor acted within the bounds of our Constitution is in the Courts.

CHAPTER 7

AND NOT ONE FOR THE PEOPLE

In a recent presentation by President Bush, a chart from his Council on Competitiveness showed the current number of lawyers per 100,000 population: USA, 281; Germany, 111; United Kingdom, 82; and Japan, 11.

In Alaska, according to the Alaska Bar Association, there are 2,072 licensed attorneys in this state. Over three-fourths of these attorneys, or 1,566, live in Anchorage. The ABA has no information on how many paralegals there are in Alaska, except to say there as many as there are licensed attorneys.

In most states, the legislature relies exclusively on the state attorney general for legal representation. In fact, state laws often require this. However, because the Attorney General in Alaska is appointed by the Governor rather than elected by the people, our legislature must often turn to private counsel for advice and guidance when conflicts arise with other branches of government.

Today in Alaska, there is a major concern as to how the Legislature may address confrontations with other agencies of state government. It is most logical to look to our Courts. But, as every citizen knows, litigation is expensive. Thus, the Legislature must appropriate money for lawsuits, especially when there are differences in interpretation of our Constitution.

Although past administrations have opposed the appropriation of state funds for hiring lawyers to represent the Legislature,

during the Sheffield administration a precedent was set for this type of action. At that time, the Legislature took to court, and won, a dispute between the Legislative and Executive branches over powers of appropriation. Ironically, the law firm hired by the Legislature to defend that action was Ely, Guess and Rudd, which was the firm of the existing Attorney General. So the same person who previously received Legislative appropriations for legal work was then stating his concern about the legality of such appropriations.

Was that lawsuit necessary? Perhaps the questions should be, "Is a citizen, once elected to public office, any less protected under the Constitution, and any less deserving of his guaranteed inalienable rights, than the average citizen?" Was it proper to arrest and forcibly detain legislators simply because they chose not to attend a meeting?

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In Alaska, the Legislature is vulnerable to executive power when trying to defend its stands. Legislators cannot depend on the Attorney General, for he is appointed by the Governor. The Legislature does not have an established legal counsel to defend its actions, as other states do. So the Legislature must be prepared to use the courts as a sword as well as a shield to assure that its rights as an equal branch of government are protected.

There was intended to be a healthy exchange among the Legislative, Executive and Judicial branches of government. Fighting in the Legislative chambers and arrests in the halls of the Capitol over conflicts of interpretation of the Constitution can be extremely destructive. The courts are the logical place to settle these disputes.

If the Governor is ready to arrest legislators in order to force compliance with his desires, what is to prevent him from arresting any citizen to force that person's attendance whenever the Governor wants an audience?

I recall reading about a judge in another state who did not have enough jurors to hear a case. The judge felt that the case should be heard without delay, so he directed his bailiff to go out into the street and bring back people to sit on the jury. The bailiff did just that. Without a summons or any kind of notice, people were arrested-in a supermarket, at stop lights, even two men on the street who were obviously drunk. Of course, these citizens challenged the judge's right to arrest them and force them to be jurors. As you would expect, the people won their suit. But this

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If the Governor feels that legislative confirmation of his cabinet appointments is an unfair requirement, he should introduce legislation to bring the issue to a vote by the people. This is the proper way to bring about changes to the Constitution. The chances are good that such an amendment would be strongly supported by voters. Many people with whom I've spoken take this position, stating that the Governor should sink or swim by his own actions and his own people, without involving the Legislature. I happen to agree. This would enhance the separation of powers between the two branches of government, and help reduce some of the tension and abuse of power that we have witnessed.

In any case, the only place to reasonably and finally decide whether the Governor acted within the bounds of our Constitution is in the Courts.

Subject: Attorney General

counter to the experience of most states in deliberately doing that. That is, I don't think the adjutant general should be any different from the head of a department, as he would be in the state, and I think that he should be ratified, and I believe that Mr. Hellenthal's objection largely is to an expression such as "flag officers". If that is an objection, it can be cleared up by generic words in Style and Drafting. I oppose the amendment as being contrary to what we have done here in the past as to other officers.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Hellenthal be adopted by the Convention?" All in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 10 or Section 11? If not, are there amendments to Section 12? Section 13? Section 14? Section 15? Section 16? Mr. Metcalf.

METCALF: May I ask Mr. Rivers a question?

PRESIDENT EGAN: You may, Mr. Metcalf.

METCALF: Mr. Victor Rivers, you say the head of each principal department, does that include the attorney general?

V. RIVERS: By specific mention of the will of this body the attorney general is not included in this section.

METCALF: Does he have to be confirmed by the senate at all, or the legislature?

V. RIVERS: Insofar as he would fall under the head of one of the principal departments, I assume he would.

METCALF: You assume he would be one of the heads of the principal departments?

V. RIVERS: It is merely an assumption.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: The attorney general question worries me very much, and I would like to submit a small amendment. It is three words, that is all.

PRESIDENT EGAN: Would you submit it please, Mr. Metcalf.

CHIEF CLERK: "Section 16, page 7, line 14, immediately following the word 'Department', insert the phrase 'including the attorney general'."

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

METCALF: I move that it be adopted and ask unanimous consent.

BUCKALEW: Objection.

DOOGAN: Point of order.

PRESIDENT EGAN: Objection is heard. Your point of order, Mr. Doogan.

KNIGHT: I second the motion.

DOOGAN: My point of order is that we have already considered this matter once, and I take exception to the remarks by the Chairman of the Legislative Committee in that this body by their action implied that the attorney general would not be one of those principal departments. I take exception for this reason: that is, as it was so aptly pointed out by Mr. Davis, the thing they did not want to do was to set up the attorney general's office in the constitution but it could be set up as one of the principal departments.

PRESIDENT EGAN: As to the point of order raised by Mr. Doogan, we did consider spelling out that there be an attorney general once before in this section, did we not? Mr. Ralph Rivers.

R. RIVERS: I was about to offer an amendment so I got talked out of it, so it is the first time it has come up.

PRESIDENT EGAN: If this is the first time, the point of order would not be well taken at this time. Mr. Taylor.

TAYLOR: I was going to raise the same point of order as Mr. Doogan, but I think I am going to go even further because there was a specific amendment offered to provide for the establishment of an elected attorney general.

PRESIDENT EGAN: This does not say though, Mr. Taylor, that he would have to be an elected attorney general.

TAYLOR: Mr. Barr's motion to adopt an amendment to that effect would be.

PRESIDENT EGAN: But Mr. Metcalf's amendment does not include anything of that nature, so the amendment would be in order at this time, Mr. Taylor. Is there discussion of the proposed amendment as offered by Mr. Metcalf? Mr. Metcalf.

METCALF: I feel that mention of the attorney general's office should be made because we have mentioned it in the proposal under direct legislation, and in initiative and referendum, I think we mentioned it once or twice there. I am confused as to whether the senate is to ratify the nomination once every two years or once every four years. I am in a state of confusion

and I would like to have this spelled out a little more as far as this important office is concerned. That's my feeling on the matter.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: May I speak on this matter now. I don't believe that it is necessary to put an attorney general in there. If you do that you might as well put all the branches you are going to have, all the principal branches of the executive department in because it naturally falls into the category of one of the principal branches of the legislature, and I think we considered that the other day. It was felt that it was a legal department of the executive branch and should not be necessarily named because the governor would have the right under our present article to appoint the attorney general who sets up the legal department of the executive department, and I can't see whether if you add that attorney general on there including the attorney general, you had better put it including the highway department and all other things. I think we should leave it the way it is, and the other things will naturally follow and fall into the proper category.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Metcalf be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 16? If not, are there amendments to Section 17? Amendments to Section 18? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Sundborg.

CHIEF CLERK: "Strike Section 18 and substitute the following: 'Section 18. The Governor may make ad interim appointments to fill vacancies occurring during a recess of the legislature in offices requiring confirmation of either or both houses of the legislature. The duration of such appointments shall be prescribed by law.'"

SUNDBORG: Mr. President, I move the adoption of the amendment.

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Sundborg moves the adoption of the proposed amendment, Mr. Rivers seconds the motion. The motion is open for discussion. Mr. Sundborg.

SUNDBORG: Mr. President, a little while ago I submitted another

Extracted from: Powers, Duties and Operations of State Attorneys General (Study by National Assoc. of

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.

Now elected

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 thirty-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).

should be 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 debts, 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,

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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).

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	2	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.

Alaska State Legislature

REPRESENTATIVE
TERRY MARTIN
~~DISTRICT 6~~
~~CHAIRMAN—LABOR AND COMMERCE COMMITTEE~~
~~PHONE 465-3070~~

3960 REKA DRIVE—B6
ANCHORAGE, AK 99504
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DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
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MEMORANDUM

February 23, 1983

TO: Representative Charlie Bussell
Representative John Liska
Representative Joe Hayes
Representative Ramona Barnes
Representative Hugh Malone
Representative Don Clocksin
Representative Ron Wendte

FROM: Representative Terry Martin TM.

SUBJECT: SPONSOR SUBSTITUTE HOUSE JOINT RESOLUTION 7
Providing for Election Attorney General

I strongly recommend that as a member of the House Judiciary Committee you vote SSHJR 7 out of committee with a "do pass" recommendation.

In 1979 I introduced HJR 6, Providing for Election of Attorney General (copy attached) in the House of Representatives.

I believe passage of SSHJR 7 would eliminate conflicts arising from a Governor having control of a State Attorney General. The majority of Alaskans believe the Attorney General is to protect the public interest -- not only that of the Executive Branch of Government.

Attachment

bc: Rep. Rick Uehling

OUTLINE OF REMARKS

Attorney General Clarence A. H. Meyer

ATTORNEY GENERAL SHOULD BE ELECTED - NOT APPOINTED

(3-6-7-1

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 opinion 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."

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	To legislators	To local prosecutors	On the interpretation of statutes	On the constitutionality of bills or ordinances	Reviews legislation: Prior to passage	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)	*	*	(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	...	B	...	*	*	*	*	...	*	*
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)
Ohio	B,C,F	B,F	F	B,C	*	* (c)	*	*	...	...	...
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	B	*	*	*	*	*	*	*
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)	*	*	*	*	*	*(b)	...	*
North Carolina	A, B, C	*	*	*	*	...	*	...	*	*
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	*(a)	*	*	*	...	*	...	*	*
South Carolina	A, B, C	*(d)	*	*	*	...	*	...	*	*
South Dakota	A, B, C	*(a)	*	*	*	...	*	*(b)	*	*
Tennessee	A, B, C	*(a)	*	*	*	...	*	...	*	*
Texas	A, B, C	*(c)	*	*	*	*	*	*	*	*
Utah	A, B, C	*(a)	*	*	*	*	*	*(b)	...	*
Vermont	A, B, C	*(b)	*	*	*	*	*	*	*	*
Virginia	A, B, C	*(a)	*	*	*	*	*	*	*	*
Washington	A, B, C	*(c,f)	*	*	*	*(f)	*	*	*	...
West Virginia	A, B, C	*(a)	*	*	*	*	*	*(b)	*	...
Wisconsin	A, B, C	*(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.

MEMORANDUM

State of Alaska

TO: Hon. Stephen McAlpine
Lieutenant Governor

DATE: May 10, 1985

FILE NO: 366-401-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: Initiative petition re income taxes

By: Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have requested our review of the initiative submitted to you for review under AS 15.45.070. The initiative proposes to "amend" AS 43.20 to provide that any law establishing a state tax on personal income or retail sales may not take effect until approved by the electorate at the next general election. In essence, the initiative purports to qualify by law the legislature's constitutional prerogative to reenact a state income or sales tax. For the reasons stated below, we recommend that you reject the proposed initiative.

We initially note the scope of our review. An initiative committee is required under AS 15.45 to submit an initiative application to the lieutenant governor for review. With respect to a substantive review of the initiative, courts typically acknowledge that general contentions as to the constitutionality of a bill proposed by initiative are justiciable only upon enactment. E.g., Boucher v. Engstrom, 528 P.2d 456, 460 n.13 (Alaska 1974). In Boucher, however, the court concluded that the lieutenant governor's review of an initiative application under AS 15.45.010 -- 15.45.080 was intended to extend to a review as to whether or not the proposed bill complies with the particular constitutional and statutory provisions regulating initiatives." Id. at 460. The initial inquiry is therefore whether the proposed bill constitutes a "law" within the scope of the article VI initiative process. And assuming the initiative proposes enactment of a law, article XI, section 7 specifically precludes use of the initiative process "to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation."

We believe the initiative improperly proposes to amend the constitutionally prescribed scope of the referendum process through the enactment of a law. Article XI, section 6 provides in pertinent part that "An Act rejected by referendum is void thirty days after certification." In Walters v. Cease, 388 P.2d 263 (Alaska 1964), the Alaska Supreme Court specifically held that the constitutional framers did not intend to suspend the

effective date of legislation subject to a referendum petition.

> We believe that the framers of the constitution and the people who adopted it intended that the effectiveness of an act passed by the legislature should not be suspended during the period between its effective date and its rejection by the referendum. If they had intended otherwise they would have expressly so provided in the constitution.

Id. at 268 (footnote omitted). Qualifying legislative adoption of a sales tax on the referendum process is directly contrary to the constitutionally prescribed process as defined under the Walters v. Cease rule. Indeed, if suitable to impose a limit on the legislature's authority to enact a state income or sales tax, it would be hypothetically possible to qualify the effective date of all legislation upon voter approval -- a fundamental realignment of the constitutionally prescribed scope of the referendum process reflected in the Walters v. Cease rule. To preclude the subtle, if not direct, derogation of constitutionally prescribed procedures, courts uniformly recognize that a statute enacted by initiative cannot modify the constitution. E.g., Starr v. Haggland, 374 P.2d 316, 317 (Alaska 1962). Rather, a constitutional amendment can only be enacted through the procedures established in article XIII of the Alaska Constitution. Accordingly, we believe a court would likely conclude that the proposed initiative is an invalid attempt to modify the referendum process established under the Alaska Constitution.

The proposed bill may similarly be viewed as an improper alteration of the bill enactment procedures proscribed under article II of the Alaska Constitution. Again, the general inquiry is whether it is consistent with article II procedures for the enactment of all general laws of a specified class to require voter approval. We believe that while the legislature may well enjoy the authority under article II, section 18 to condition the effective date of a specific enactment upon voter approval, we doubt whether it is consistent with article II procedures to require voter approval as a general matter of course. We therefore conclude that the initiative may also be viewed as an improper attempt to modify the constitutional enactment provisions.

Even if not viewed as an improper attempt to amend the constitution, it is questionable whether the proposed bill would be a proper exercise of legislative power. See generally Yute Air Alaska, Inc. v. McAlpine, ___ P.2d ___ Op. No. 2928 (Alaska, Apr. 19, 1985). As the court stated in Municipality of Anchorage v. Frohne, "the subject of the initiative must constitute such

legislation as the legislative body to which it is directed has the power to enact." 568 P.2d 3, 8 (Alaska 1977). May the legislature condition the effective date of a bill upon voter approval? No Alaska court has confronted this question, though we have previously advised that we believe that it is consistent with the broad powers of "direct legislation" reserved to the people under article XI, Alaska Constitution for the legislature to enact a general law, only to delay the effective date until the law is approved by the voters. See 1982 Inf. Op. Att'y Gen. (Feb. 9; J66-479-82); 1982 Inf. Op. Att'y Gen. (Apr. 23; J66-545-82); contra 1963 Op. Att'y Gen. No. 18 (June 11). We caution, however, that the majority of courts which have addressed the propriety of similar efforts to delay the effective date until voter approval have ruled that such a process constitutes an impermissible delegation of legislative powers. 1/

Our final legal concern is whether the initiative or referendum process may be utilized to enact or reject a state tax measure. In Thomas v. Bailey, the court noted that courts in other jurisdictions have disagreed as to whether a tax measure falls within an appropriation restriction. 595 P.2d 1, 5 n.19 (Alaska 1979). Article XI, section 7 restricts "appropriations" from the initiative and referendum process. As the court observed in Bailey, "The danger with direct legislation relating to appropriations is that it tempts the voter to [prefer] his immediate financial welfare at the expense of vital government activities.'" 595 P.2d at 8 (citations omitted). Notwithstanding that the Alaska Homestead Act was not styled as an "appropriation," the court in Bailey concluded that the disposal of state land was within the "appropriation" restriction, since it posed the same concerns as an immediate grant of money and was thus the "kind [of decision] that require the reasoned deliberation characteristic of legislative actions." 595 P.2d at 8. Comparable arguments can plainly be offered with respect to any state income or sales tax. However, since we have discovered no direct authority which conclude that tax measures are "appropriations" within initiative or referendum restrictions, we have substantial doubt whether the court would extend the scope of the section 7 restrictions.

1/ Since article IV, section 1 of the Alaska Constitution provides that the power of taxation "shall not be suspended or contracted away ...," the argument of improper delegation may have greater force in the context of a restraint for the legislature's taxation prerogatives than in other areas. But see Carlson v. Cory, 189 Cal. Rptr. 185 (Cal. App. 1982).

In sum, it is our view that the initiative in effect seeks to modify the constitution, both with respect to the referendum process in article XI and the enactment process in article II. Since a constitutional amendment cannot be enacted through the initiative process, we believe the initiative application should be rejected. 2/ If you have any question, please feel free to contact me.

JBR/pjg

cc: Sandra Stout, Director
Division of Elections

2/ We finally note several minor form irregularities. First, we perceive no basis to recite in the initiative the provisions of either article I, section 2 or of AS 15.45.010. See AS 15.45.040. Second, AS 43.20.010 has been repealed, and as a consequence, the initiative does not in fact propose the adoption of an amendment to an existing provision.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

August 22, 1985

MEMORANDUM

TO: Representative Terry Martin

FROM: Mark Torgerson MT
Legislative Analyst

RE: Election of Attorney General: Potential Additional Costs
Research Request 86-015

You asked that we investigate whether it costs more to have an elected attorney general or an appointed attorney general. As part of your request, you asked whether two departments of law are needed if the attorney general is elected by popular vote.

We contacted 12 states' attorneys general departments, the Alaska Department of Law and the National Association of Attorneys General.[1] Although they were unable to supply definitive financial figures, they provided the following information.

Summary

All those contacted agreed that the costs of operating an elected or appointed attorney general's department are dependent upon the structure and organization of the department that is established, and not on the nature of the selection process. For example, if the attorney general's department remains within the executive branch of government for administrative purposes--that is, purchasing, accounting, data processing and other administrative functions are performed centrally--the costs of administration should be comparable whether the position is elected or appointed. On the other hand, the establishment of an independent department, responsible for its own administrative functions, could require additional appropriations for administration. Based upon their departments' experiences, officials in other states (including elected and appointed departments) did not anticipate a

[1]The states contacted for this request include Delaware, Idaho, Maryland, Montana, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Virginia, Washington, and Wyoming.

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.

significant increase in Alaska's attorney general's operating costs if Alaska changes to the popular election of the attorney general.

In addition, costs are dependent upon the legal responsibilities of the attorney general's department. For example, the attorneys general departments in four states--Alaska, Delaware, New Jersey, and Rhode Island--handle all civil and criminal prosecutions for violations of state laws. In the other states, attorneys general are responsible for civil litigation only, while independent county or district attorneys prosecute the criminal violations. Because the four states mentioned incur operating costs for criminal prosecutions, their budgets must be adjusted accordingly. In any event, the costs of operating an elected attorney general's department will depend largely upon the responsibilities assigned to the department.

Moreover, officials in other states and counsel for the National Association of Attorneys General said that two separate legal departments are not required if the attorney general is selected by popular vote. The attorney general--whether elected or appointed--is the chief legal adviser of the governor, and--in most states--legal adviser to the executive branch agencies. Although governors in the states contacted often retain one or more lawyers on their personal staff, or are statutorily authorized to hire a "general counsel" for independent legal advice, they rely on their attorney general for formal legal advice. If the governor disagrees with the attorney general on a legal issue, the governor is allowed to hire special counsel to represent him or her on the case. For example, Ron Rogers, Chief of the Division of Legal Counsel for the New Hampshire attorney general, stated that the governor there occasionally disagrees with advice given by the attorney general to an executive branch agency. When this occurs, the governor hires special counsel to represent him, while the attorney general represents the executive agency in the ensuing lawsuit. Mr. Rogers said that on some occasions, the attorney general will represent the governor, and the executive agency will retain special counsel. Although New Hampshire's attorney general is appointed by the state's governor, Mr. Rogers asserted that conflicts of this nature occur in either "elected" or "appointed" states, and that a separate legal department is not necessary to handle these matters.

Susan Hansen, Administrative Officer of the Montana Attorney General's Office, agreed with Mr. Rogers' assessment. In Montana, the attorney general is elected by popular vote. Ms. Hansen stated that although the governor there is authorized to retain one "legal counsel to the governor," the attorney general normally represents the governor on formal legal matters. On those rare occasions when the governor and the attorney general disagree on a legal issue and "go to court" to resolve the dispute, the governor's legal counsel represents the governor.

According to Ms. Hansen, Montana's governor and attorney general have enjoyed a good working relationship despite the fact that the attorney general is elected by popular vote. Officials in the other states contacted--both those with elected and those with appointed attorneys general--provided comparable assessments; significant disputes between the governor and attorney general have been uncommon.

Pennsylvania's Conversion to Popular Election of the Attorney General

Pennsylvania is one of 43 states where the attorney general is elected by popular vote.[2] It is the only state which has recently converted its selection process to the popular vote method, having done so when the state's voters approved an amendment to the constitution in 1978. The structure of Pennsylvania's legal services is unique among the states contacted. When the conversion occurred there, a legal division separate from the attorney general was created. This division, entitled the Office of General Counsel, is managed by an attorney (general counsel) appointed by the governor. The division includes attorneys who represent all executive branch agencies. (Prior to the conversion to the popular election process and the creation of the general counsel division, the agency attorneys were employed by the attorney general. These attorney positions were eliminated from the attorney general's staff after the conversion.) The general counsel and the agencies' attorneys provide initial "in-house" legal advice. However, if legally binding opinions are needed, they must be written by the Attorney General's office. In addition, the attorney general has primary responsibility to conduct all litigation. Nevertheless, the governor may instruct the general counsel to represent the executive branch when deemed necessary. Furthermore, the attorney general may delegate litigation responsibilities when doing so is believed to be in the best interests of the Commonwealth.

In the other states contacted which elect the attorney general, attorneys who represent the executive agencies are usually employed by the attorney general. In some states, such as Washington, the agencies are statutorily prohibited from hiring their own counsel without prior approval of the attorney general. According to Tim Malone of the Washington Attornry General's Office, the need for special counsel for the agencies is rare.

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[2]A breakdown of the selection process in all states is contained in House Research Request 81-91, which is attached to this memorandum.

Fiscal Note to Sentate Journal Resolution (SJR) 9

Attachment A is a fiscal note to SJR 9 "relating to the election of the attorney general." The note, which was prepared by the Alaska Department of Law's Division of Administrative Services, asserts that costs for administrative services could increase to approximately $2.5 million from the current $424,600 for FY 86. However, Richard Pegues, Director of the department's Division of Administrative Services, stated that these figures are "guesstimates" based upon the current language of SJR 9. Mr. Pegues stated that the division determined the note's figures under the assumption that an elected attorney general would be entirely independent of the executive branch and would require additional staff to handle functions now performed by the Office of Management and Budget and other executive branch divisions. Mr. Pegues stated that most of the staff positions represented in the fiscal note currently exist in divisions within the executive branch.

No state we contacted duplicates functions to the extent envisioned in the fiscal notes to SJR 9. Based on the activities of other states, it would be possible to provide for the election of the attorney general while retaining Alaska's current organizational structure, including centralized administrative services. The State could also choose from a number of alternative organizational structures, including the following:

- a structure comparable to that used in Pennsylvania, i.e., establish an office of General Counsel which includes executive agency attorneys who would be transferred from the attorney general's office; the elected attorney general would be responsible for all state litigation unless a conflict arises with the governor, or unless delegated; district attorneys could be elected by the communities or appointed by the attorney general, depending upon the option chosen by each community; or

- a structure which provides for the appointment of the attorney general (by the governor, the legislature or the supreme court) who could serves as counsel to the govenor and who would be responsible for civil litigation while elected state prosecutor would supervise all state criminal matters; district attorneys could be elected locally or be appointed, and could get tenure after working satisfactorily for a stated period.

Although these alternatives have been described superficially, they illustrate the variety of potential options for delivery of legal services in Alaska. According to David DeVries, Chief Deputy Attorney General in Pennsylvania, the change in that state's legal structure has not been a major problem; the crucial event is the legislative drafting of the implementing legislation. Mr. DeVries recommended drafting the legislation prior to the applicable election to increase voter awareness.

Attached with this request is a letter (Attachment B) concerning SJR 9 from Attorney General Gorsuch to Senator Rodey. According to Joe Geldhof of the Attorney General's Office, the Department of Law has no other Alaska studies on this issue.

I hope this information is useful to you. If you need additional information on attorneys general in other states, please contact our agency.

MT

Attachments

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR No. 9

Title: "...relating to the election of the attorney general."

Sponsor: Sen. DeVries

Requestor: Office of the Gov./OMB

Date of Request: April 22, 1985

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Gen. Govt., Admin. of Justice, Public Protection

BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING					*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND					*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME					*	*
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

* Because expenditures would not begin until the latter part of FY 89 1/, actual costs cannot be determined at this time. Please see the attached analysis.

1/ It is not clear from the resolution whether an incumbent or newly appointed attorney general, appointed prior to the first Monday in December, 1988, could assume independent status if a constitutional amendment conferring such status is approved in 1986.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 4/23/85

Approved by Commissioner: Norman C. Gorsuch Date: 4/23/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SJR No. 9 4/23/85
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 on behalf of the governor. 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. In an Executive Branch agency, a temporary clerk may not be hired without inter-departmental approval. Likewise, a single file cabinet may not be purchased, nor may a single telephone line be ordered without such approval.

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.

Additional costs, expressed in FY 85 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 would determine an independent department's freedom of action.

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 33 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, $25,000 for personnel system printing. Word processors will cost $14,500 each for a total cost of $72,500. Records management equipment include storage devices and microfilm/graphics equipment totalling $95,000. Duplication equipment will cost approximately $170,000. DP costs will probably total about $150,000 for computing time and storage and about $150,000 for existing systems program maintenance.

The total additional cost of $2,554,937 is an enormous increase over the department's current administrative overhead of $424,600 projected for FY 86. It is, however, part of the price that will probably have to be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1986 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 the proliferation of special counsel on the staffs 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 1985 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 $1.5 million annually, within just a few years.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19	51,365.	Travel	2,500.	
	(1) Admin. Officer R17	44,923.	Contractual	24,100	
	(1) Clk. Typist R8	27,143.	Commod.-ongoing	5,400.	
			Commod.-one-time	4,500.	
			Equip.-one-time	18,100.	
	(3)	123,431.		54,600.	178,031.
Personnel					
	(1) Personnel Mgr. R21	58,195.	Travel	10,000.	
	(2) Personnel Analysts R16	42,103. X 2	Contractual	54,200.	
	(1) Training Officer R18	48,107.	Commod.-ongoing	14,400.	
	(2) Personnel Tech.'s R12	33,820. X 2	Commod.-one-time	12,000.	
	(1) Payroll Clerk R10	30,284.	Equip.-one-time	24,100.	
	(1) Clk. Typist R8	27,143.			
	(8)	315,575.		114,700.	430,275.
Property/Supply					
	(1) Materials Mgr. R21	58,195.	Travel	7,500.	
	(1) Purchasing Agent R18	48,107.	Contractual	19,600.	
	(1) Supply Officer R16	42,103.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R2	27,143	Commod.-one-time	6,000.	
			Equip.-one-time	19,300.	
	(4)	175,548.		59,600.	235,148.
Finance/Accounting					
	(1) Finance Officer R21	58,195.	Travel	5,000.	
	(1) Acct. Supervisor R16	42,103.	Contractual	33,100.	
	(2) Acct. Clerk R10	30,284. X 2	Commod.-ongoing	9,000.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	7,500.	
			Equip.-one-time	15,700.	
	(5)	188,009.		70,300.	258,309.

Records Management					
	(1) Records Analyst R18	48,107.	Travel	1,800.	
	(1) Records Supervisor R15	39,415.	Contractual	81,200.	
	(1) Records Handler R12	33,820.	Commod.-ongoing	9,000.	
	(2) Microfilm Operators R10/R14	30,284./37,005.	Commod.-one-time	7,500.	
			Equip.-one-time	105,000.	
	(5)	188,631.		204,500.	393,131.
Data Processing/Communications					
	(1) DP Mgr. R23	65,742.	Travel	7,500.	
	(1) Programmer Analyst R17	44,923.	Contractual	319,900.	
	(1) DP/Comm. Sys. Supvr.R18	48,107.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	6,000.	
			Equip.-one-time	56,100.	
	(4)	185,915.		396,700.	582,615.
Duplication Svcs.					
	(1) Duplication Mgr. R19	51,365.	Travel	1,000.	
	(1) Printing Tech. R17	44,923.	Contractual	74,500.	
	(2) Machine Operators R12	33,820. X 2	Commod.-ongoing	57,200.	
			Commod.-one-time	6,000.	
			Equip.-one-time	174,800.	
	(4)	163,928.		313,500.	477,428.
TOTAL	(33)	1,341,037.		1,213,900.	2,554,937.

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 23, 1985

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Elected AG
SJR 9

Dear Senator Rodey:

I would like to comment on the merits of the question of whether or not we should elect the attorney general.

As you take up this issue, it is useful to consider how this proposed change will effect the citizens of our State in both the short and long term. 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 the election of some or all other commissioners.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, the Attorney General 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 serve at the pleasure of the President with the advice and consent of the Senate. 1/

1/ Our research indicates that the Attorney General is popularly elected in forty-three states. The Attorney General is appointed by the Governor in five states (New Hampshire, Alaska, Hawaii, New Jersey and Wyoming), three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is a "constitutional officer" selected by the Legislature while Tennessee's Attorney General is selected every eight years by the Supreme Court of that state.

I have a number of substantive points which weigh against the election of the attorney general. First, in Alaska, the people, through their legislators do participate in the selection of the attorney general by the confirmation process. In addition, the confirmation process allows the Legislature to examine the qualifications and integrity of the nominee.

Secondly, 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. The delegates to our Constitutional Convention recognized over a quarter century ago that, in our vast state with its disparate interests and citizens, the administration of state government requires a strong governor. This still holds true today. 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 administrative officials can lead to a less responsive state bureaucracy and a diffused accountability of the executive branch 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. 2/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but that 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

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

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.

Thirdly, in addition to the practical problems caused by an elected attorney general, experience in other states with an elected attorney general suggests that the Governor's office will incur substantial costs with respect to the use of separate and additional counsel for the Governor. 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 Governor's 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 counsel, 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. 3/

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 extra cost incurred by the Governor's office to hire and use legal counsel 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 legal bureaucracy.

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

Fourthly, in states where the attorney general is elected, the heads of executive departments often hire their own attorneys. In jurisdictions with elected attorneys general, there is often a proliferation of house 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. Without centralized legal service and advice, each agency will rely on advice from its own lawyers. Therefore, agencies will receive differing interpretations as they raise legal issues. This in turn will make consensus among different agencies on issues more difficult to achieve. The result is that public policy decisions in the executive branch will be delayed to the detriment of the public and the legislature. In addition, these house counsel frequently submit amicus briefs in litigation affecting their department's programs. It is not unusual in states with an elected attorney general to see four or five separate briefs filed in a single matter, representing the varying viewpoints of different agencies, in addition to the attorney general's brief. If nothing else, this needless duplication insures that the courts and the public will be confused about state policy on many issues.

In my estimation, the cost for such additional counsel in Alaska could easily exceed $1.0 million annually, within a few years. This cost is simply not warranted by any rational criteria and should be further questioned in light of diminishing revenues. We have many more basic needs in Alaska which command the state government's immediate attention. Surely we do not want a needless layer of extra lawyers embedded in state agencies.

In summary, it is my opinion that electing the Attorney General will split administrative responsibility and executive authority, diffuse the political accountability of the executive branch to the public, add more attorneys to state government, contribute to more intense bureaucratic infighting among agencies, delay the resolution of executive branch policy decisions, and create a higher rate of growth in the state operating budget.

Please call upon me at your earliest convenience if I can provide additional information on this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

The Anchorage Times

Publisher: BILL J. ALLEN
"Believing in Alaskans, putting Alaska first"
Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN
The Anchorage Times Commentary in this segment of the *Anchorage Daily News* does not represent the views of the *Daily News*. It is written and published under an agreement with former owners of *The Times*, in the interests of preserving a diversity of viewpoints in the community.

Your choice

FOR MORE years than we can recall, we have championed in these columns the election of Alaska's attorney general.

It is not a universally popular concept. Governors, one and all, think it's a terrible idea. They all want an attorney general serving at their pleasure — their private lawyer, calling the legal shots as the chief executive thinks they should be called.

That's the heart of the problem, of course.

This state's attorney general should be working for and answering to the people. He — or she, as the case may be — doesn't have the full freedom to do so if the job is dependent upon pleasing the man in the corner office of the Capitol Building.

But it is not a simple thing to make it possible for the people elect the attorney general. Under the Alaska Constitution, the office is filled by appointment of the governor. So the constitution must be amended.

And that requires, as a first step, passage of a resolution by the Legislature to place the proposition on the ballot. And then the proposed constitutional change must be appro ed by the voters.

Republican Sen. Lyda Green has started the process by introducing Senate Joint Resolution 10, which would put the issue on the ballot for approval. Its prospects in the Legislature are not altogether clear.

But let's hope it wins approval so that the voters ultimately can decide whether they favor an attorney general beholden to the governor or to the people.

In 43 other states, the attorney general is elected. Why not in Alaska, too?

Turn them in

THE DEADLINE is looming for the folks trying to win a spot on the April 15 ballot for the question of whether to run photo-radar and the Anchorage Parking Authority out of town on a rail.

Alex Gimarc is heading up the petition campaign. He reports the effort to return all law enforcement duties in Anchorage to the police is going well and that he expects to have the needed number of petition signatures by the Feb. 14 deadline.

However, Gimarc says, people who still have petitions, even those with only a signature or two, need to return them to him by Monday to ensure they will be counted.

Gimarc's effort is certain to touch off debate in this community about how traffic laws should be enforced. Hopefully, voters will have the final say.

That's the way it should be.

THE ANCHORAGE TIMES, P.O. Box 100040, Anchorage, AK 99510

FEB 6, 1997

Attorney General Index '97

1. Team Ticket Elections
2. The Anchorage Times Editorial - A.G.
3. Support Letter - Mick Manns
4. Fifty States Methods of Selection
5. SJR 10 Sponsor Statement - 1997

Table 2-4: Election Methods for Electing Lieutenant Governors

	Name	Same Party as the Governor?	Elected With the Governor?
Alabama	Don Siegelman	N	N
Alaska	Fran Ulmer	Y	Y(N)
Arkansas	Mike Huckabee	N	N
California	Gray Davis	N	N
Colorado	Gail Schoettler	Y	Y(N) - C-C
Connecticut	M. Jodi Rell	Y	Y(N) - C-C
Delaware	Ruth Ann Minner	Y	N
Florida	Buddy MacKay	Y	Y(Y)
Georgia	Pierre Howard	Y	N
Hawaii	Mazie Hirono	Y	Y(N)
Idaho	C.L. Otter	Y	N
Illinois	Bob Kustra	Y	Y(N)
Indiana	Frank O'Bannon	Y	Y(Y) - P-C
Iowa	Joy Corning	Y	Y(Y) - P-C
Kansas	Sheila Frahm	Y	Y(Y)
Kentucky	Steve Henry	Y	Y(Y)
Louisiana	Kathleen Blanco	N	N
Maryland	Kathleen Kennedy Townsend	Y	Y(Y)
Massachusetts	Paul Cellucci	Y	Y(N)
Michigan	Connie B. Binsfeld	Y	Y(Y) - P-C
Minnesota	Joanne Benson	Y	Y(Y) - JC
Mississippi	Ronnie Musgrove	N	N
Missouri	Roger B. Wilson	Y	N
Montana	Dennis Rehberg	Y	Y(Y)
Nebraska	Kim Robak	Y	Y(N)
Nevada	Lonnie Hammargren	N	N
New Mexico	Walter Bradley	Y	Y(N)
New York	Elizabeth McCaughey Ross	Y	Y(N)
North Carolina	Dennis Wicker	Y	N
North Dakota	Rosemarie Myrdal	Y	Y(Y) - JC
Ohio	Nancy Hollister	Y	Y(Y)
Oklahoma	Mary Fallin	Y	N
Pennsylvania	Mark Schweiker	Y	Y(Y)
Rhode Island	Robert Weygand	N	N
South Carolina	Bob Peeler	Y	N
South Dakota	Carole Hillard	Y	
Texas	Bob Bullock		
Utah	Olene Walker	Y	
Vermont	Barbara Snelling	N	
Virginia	Don Beyer		
Washington	Joel Pritchard	N	N
Wisconsin	Scott McCallum	Y	Y(N)

Notes:
N - Elected independent of Governor;
Y(N) - Independent Primary, Team General;
Y(Y) - Team Primary, Team General;
C-C - Nominated independently at party convention;
Y(Y)-P-C - Governor nominated in primary, nominates lieutenant governor nominee to be approved by party convention, Team General;
Y(Y)-JC - Team nomination at convention, Team General.

Legislative Research Services

130 Seward Street, Suite 218
Juneau, Alaska 99801
907/465-3991
Fax: 907/463-3351

FAX TRANSMISSION COVER SHEET

Date: *January 30, 1997*

To: *Tuckerman Babcock*

Fax: *907/465-3805*

Re: *Team Ticket Elections*

Sender: *Patricia A. Young*
Legislative Analyst

RECEIVED
JAN 30 1997
ans 0.....

YOU SHOULD RECEIVE 2 PAGE(S), INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL 907/465-3991.

Tuckerman,

Attached is a table supplied by Gail Manning at the Council of State Governments. The table, which is current, shows that 24 states use a team ticket including both the governor and the lieutenant governor. As you will see, there is some variation as to primary and general elections, etc.

Ms. Manning assures me that team tickets extend only to lieutenant governors, not to any other administrative officials. John Schachter, communications director for the National Association of Attorneys General, concurs: no state elects its attorney general on a team ticket of any sort.

Let us know if you need further assistance.

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THE ANCHORAGE TIMES, P.O. Box 100040, Anchorage, AK 99510 Te

FEB 6, 1997

SENATOR LYDA GREEN
Alaska State Capitol
Juneau, Alaska 99801-1182
(907) 465-6600 FAX (907) 465-3805

Constituent Contact Report

Name: Mick Manns - Paradise Valley Mining Date: _____

Address: _____

SSN or DOB: _____

Phone: 479-5704

Fax: 474-3000

ISSUE/REGARDING: Please Push Attorney General Bill

ACTION/RESPONSE: _____

Date Resolved: _____

Staff Member: _____

Table 2.10
SELECTED STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION

State or other jurisdiction	Governor	Lieutenant governor	Secretary of state	Attorney general	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget
Alabama	CE	CE	CE	CE	CE	GS	(a-6)	CE	GS	CS
Alaska	CE	CE	(a-1)	GB	(a-9)	GB	GB	AG	AG	GB
Arizona	CE	(a-2)	CE	CE	CE	GS	GS	GS	GS	G
Arkansas	CE	CE	CE	CE	CE	GS	(a-15)	B	BG	AG
California	CE	CE	CE	CE	CE	GS	(b)	GS	GS	N.A.
Colorado	CE	CE	CE	CE	CE	GS	GS	GS	CS	G
Connecticut*	CE	CE	CE	CE	CE	GE	GE	GE	CS	CS
Delaware	CE	CE	GS	CE	CE	GS	GS	GS	G	GS
Florida	CE	CE	CE	CE	CE	G	A	CE	(a-9)	G
Georgia	CE	CE	CE	CE	B	G	GS	CE	GS	G
Hawaii	CE	CE	(a-1)	GS	(a-6)	GS	(a-9)	GOC	AG	GS
Idaho	CE	CE	CE	CE	CE	G	G	G	G	(a-15)
Illinois	CE	CE	CE	CE	CE	CE	GS	GS	GS	G
Indiana	CE	CE	CE	CE	CE	G	G	LG	C	G
Iowa	CE	CE	CE	CE	CE	GD	(a-16)	CE	GS	GS
Kansas	CE	CE	CE	CE	CE	GS	GS	GS	GS	G
Kentucky	CE	CE	CE	CE	CE	G	AG	CE	AG	G
Louisiana	CE	CE	CE	CE	CE	GS	GS	CE	GS	CS
Maine	CE	(a)	CL	CL	CL	G	GLS	GLS	GLS	A
Maryland	CE	CE	GS	CB	CL	G	(a-6)	GS	AG	GS
Massachusetts*	CE	CE	CE	CB	CE	GLS	GLS	B	B	B
Michigan	CE	CE	CE	CE	GS	GS	(a-6)	S	GS	GS
Minnesota*	CE	CE	CE	CE	CE	G	GS	GS	A	(a-15)
Mississippi*	CE	CE	CE	CE	CE	GS	(a-15)	SE	GS	A
Missouri	CE	CE	CE	CE	CE	G	GS	GS	AGS	A
Montana	CE	CE	CE	CE	G	G	G	G	A	G
Nebraska	CE	CE	CE	CE	CE	GS	GS	GS	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	BA	A	(a-5)
New Hampshire	CE	(a)	CL	GC	CL	GC	GC	GC	GC	GC
New Jersey	CE	(a)	GS	GS	GS	GS	(a-16)	BG	GS	GS
New Mexico	CE	CE	CE	CE	CE	N.A.	(a-16)	N.A.	G	G
New York	CE	CE	GS	CE	AG	G	(a-16)	GS	GS	G
North Carolina	CE	CE	SE	SE	SE	G	G	SE	G	G
North Dakota	CE	CE	CE	CE	CE	G	G	CE	G	(gg)
Ohio	SE	SE	SE	SE	SE	G	G	G	AG	G
Oklahoma	CE	CE	GS	CE	CE	GS	G	BG	B	(a-15)
Oregon	CE	(a-2)	CE	SE	CE	G	GS	GS	A	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G
Rhode Island*	CE	CE	CE	CE	CE	G	G	AGS	AGS	AGS
South Carolina	CE	CE	CE	CE	CE	CE	B	CE	(a-4)	AB
South Dakota*	CE	CE	CE	CE	CE	G	G	G	A	(a-15)
Tennessee	CE	(vv)	CL	CT	CL	G	(a-16)	G	G	A
Texas	CE	CE	GS	CE	GS	GS	(a-16)	CE	B	GOC
Utah	SE	SE	(a-1)	SE	SE	G	G	G	G	G
Vermont	CE	CE	CE	SE	CE	CL	GS	GS	GS	(a-15)
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB
Washington*	CE	CE	CE	CE	CE	GS	GS	GS	GS	(a-15)
West Virginia	CE	(a)	CE	CE	CE	G	G	SE	G	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	GS	GS	A
Wyoming	SE	(a-2)	SE	G	SE	G	G	G	B	A
U.S. Virgin Islands	CE	CE	(a-1)	G	G	G	G	G	(a-1)	G

Source: The Council of State Governments' survey of state personnel agencies, January 1996, except where noted by * where data are from *The Book of the States 1994-95*.

Note: The chief administrative officials responsible for each function were determined from information given by the states for the same function as listed in *State Administrative Officials Classified by Function, 1995*, published by The Council of State Governments.

Key:
N.A. — Not available.
... — No specific chief administrative official or agency in charge of function.
CE — Constitutional, elected by public
CL — Constitutional, elected by legislature
SE — Statutory, elected by public
SL — Statutory, elected by legislature.
L — Selected by legislature or one of its organs
CT — Constitutional, elected by state court of last resort.

Appointed by:	Approved by:
G — Governor	
GS — Governor	Senate
GB — Governor	Both houses
GE — Governor	Either house
GC — Governor	Council
GD — Governor	Department
GLS — Governor	Appropriate legislative committee or Senate
GOC — Governor & Council or cabinet	
LG — Lieutenant Governor	
LGS — Lieutenant Governor	Senate
AG — Attorney General	
SS — Secretary of State	
A — Agency head	
AB — Agency head	Board
AG — Agency head	Governor
AGC — Agency head	Governor & Council
ALS — Agency head	Appropriate legislative committee
ASH — Agency head	Senate president & House speaker
B — Board or commission	
BG — Board	Governor
BGS — Board	Governor & Senate
BS — Board or commission	Senate
BA — Board or commission	Agency head
CS — Civil Service	
LS — Legislative Committee	Senate

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SENATOR LYDA GREEN

SENATE DISTRICT N

SPONSOR STATEMENT SJR10, AN ELECTED ATTORNEY GENERAL
Senator Lyda Green * February 4, 1997

An idea whose time has come: Elect the Attorney General

Should the Attorney General (A.G.) be directly accountable to the people or simply a direct appointment by the Governor? Senate Joint Resolution 10 (SJR10), a constitutional amendment to our State constitution provides for the direct election of Alaska's A.G.

Under current law, the Governor has unilateral power to appoint and dismiss the A.G. (subject only to confirmation of new appointments by the Legislature). Only three other states give the Governor such power over the A.G. A special council picks the A.G. in one state, the legislature in another, and the Supreme Court chooses Tennessee's. In 43 states, the people get to select their own A.G.

An A.G. directly responsible to the voters will focus on better protection from crime for the innocent, surer prosecution of the accused, and appropriate punishment for those convicted.

Alaska deserves an A.G. dedicated to advancing the State's rights with vigor and full commitment. We will be far more certain the A.G. will do just that if he faces the voters in the next election.

By prohibiting the A.G. from running for Governor or Lt. Governor until after an intervening election. we should help reduce or eliminate the use of the office as stepping-stone.

By requiring the A.G., after the primary, to run with the Governor and Lt. Governor as a team or ticket. we should go a long way to eliminating the friction between the Governor and A.G. that plagues many other states.

By requiring the direct election of the A.G. we will go a long way toward making the A.G. a better servant of the people and the law.