

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

801 SCOM127: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

SJR 9 Article II, Section 9
The Legislature

Relating to sessions of the Legislature.

(1) Provides for one hundred twenty (120) calendar days for the regular session with extensions of ten (10) day increments by concurrence of a majority of the membership of each house. [IN SENATE STATE AFFAIRS].

SJR 10 Article II, Section 3
The Legislature

Relating to terms of legislators.

(1) Provides for term of representatives to be four years and senators to be six years. [IN SENATE STATE AFFAIRS].

SJR 19 Article III, Section 4
The Executive

Relating to the Governor and Lt. Governor. He may serve again after one term has intervened.

(1) Provides for one six year term for Governor;

(2) If Lt. Governor succeeds Governor for four years or more, he may only serve one term;

(3) Lt. Governor shall hold office for six years, may only serve one term, and can be re-elected after one full term has intervened. [IN SENATE STATE AFFAIRS].

SJR 21 Article VII, Section 1
Health, Education, and Welfare

Relating to state aid to private educational institutions. Deletes [NO MONEY SHALL BE PAID FROM PUBLIC FUNDS FOR THE DIRECT BENEFIT OF ANY RELIGIOUS OR OTHER PRIVATE EDUCATIONAL INSTITUTION]. [IN SENATE JUDICIARY].

SJR 24

Article IX, Adding a new section
Finance and Taxation

Limiting increases in appropriations from the general fund:

"SECTION 16. APPROPRIATION GROWTH LIMIT. The annual general fund budget presented by the governor to the legislature for a fiscal year shall not exceed the amount appropriated from the general fund for the previous fiscal year by more than nine per cent. The total amount appropriated from the general fund for a fiscal year by the legislature shall not exceed the amount appropriated from the general fund for the previous fiscal year by more than nine per cent. These limitations may be exceeded for the purpose of meeting natural disasters, repelling invasion, or suppressing insurrection." [IN SENATE JUDICIARY].

SJR 26

Article IX, Section 15
Finance and Taxation

Relating to finance:

"SECTION 15. ALASKA PERMANENT FUND. At least seventy-five [TWENTY-FIVE] per cent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments, one hundred per cent of all [AND] bonuses received by the State, and one hundred per cent of all revenue received by the State from the sale of land, except land-sale revenue pledged, before or after the effective date of this amendment, to repay bonds, shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law."

SJR 35

Article IX, Section 1
Finance and Taxation

Limiting tax levies by the state and its political subdivisions.

"SECTION 16. LIMITATION ON TAXING POWER. No tax shall be levied by the State except for the taxes

existing upon the date of ratification of this section by the people of the State nor shall the rate of an existing State tax be increased above the rate in effect on January 1, 1979 except for taxes or increases necessary for emergency purposes and which are in effect for not more than one year and except for State taxes or increases levied to pay or secure the payment of general obligation bonds whether or not the bonds are in default or in danger of default." [IN SENATE STATE AFFAIRS].

STATE CONSTITUTIONAL CONVENTIONS

DURING THE 1970's

Prepared For

INTERIM COMMITTEE
on the
CONSTITUTIONAL CONVENTION
of the
ALASKA STATE LEGISLATURE

By

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January 11, 1980

STATE CONSTITUTIONAL CONVENTIONS

DURING THE 1970's¹

In the United States, the Constitutional Convention is a traditional method of revising an old constitution or writing a new one. Since the beginning of the republic, at least 230 constitutional conventions have been convened in the fifty states. In forty-one states, constitutional conventions are expressly authorized in the constitution. In other states, constitutional conventions are sanctioned extraconstitutionally by judicial interpretation and practice.

This report focuses on state constitutional conventions convened during the 1970's. It compares the notable features of these conventions, identifies major innovations in their proposals, and extracts information from the experience in state constitution-making during the past decade which may be of value to the State of Alaska in planning for the possible upcoming constitutional convention.

NUMBER AND TYPES

Twelve constitutional conventions have been held in ten states during the 1970's. Seven of these were unlimited conventions with no restrictions on their power to propose revisions: One each in Hawaii, Illinois, Montana, New Hampshire, and North Dakota, and two in Arkansas. Five were limited constitutional conventions, whose powers were restricted to specific areas or subjects: One each in Louisiana, Rhode Island, and Texas, and two in Tennessee.

In addition, a limited convention was called in Arkansas without popular referendum in 1975, but was declared unconstitutional by the Arkansas Supreme Court.

Two of the twelve conventions during the 1970's were called in states whose constitutions have no provision for a constitutional convention. The voters in these states approved the constitutional amendment to call the conventions. In all other states, except Louisiana, the convention call was approved by the electorate. Louisiana's Eleventh Constitutional Convention was called by a legislative act and signed by the governor.

MEMBERSHIP AND COST

The membership of unlimited conventions differs little from that of limited conventions. The number of delegates to the twelve conventions ranged from ninety-eight in North Dakota, up to four hundred in New Hampshire. The constitutional amendment authorizing the Texas convention provided that the members of the legislature would constitute the convention membership. In all other instances, except for twenty-seven of the thirty-two delegates in Louisiana, members of the conventions were elected. House Districts were used to elect delegates in all states except Illinois and Rhode Island where Senatorial Districts were the basis for representation. Election of delegates to the conventions was nonpartisan except in Montana, Rhode Island, and Texas.

Compensation of the delegates varied from \$3.00 per day plus mileage for the four hundred new Hampshire delegates, (who met only 12 days) up to the \$1,000 per month (but not more than \$4,000 total) plus per diem allowance paid to the Hawaiian delegates. Comparative figures on compensation are somewhat unrealistic because of the inflation factor throughout the 1970's

Appropriations to finance conventions during the past decade likewise varied greatly. Funding for both unlimited and limited bodies ranged from \$20,000 appropriated for the Rhode Island limited convention to the highest for unlimited conventions of \$2.88 million in Illinois, \$2.91 million in Louisiana, and \$3.8 million for the limited Texas convention.

PREPARATION, ORGANIZATION AND PROCEDURE

All states with successful conventions during the 1970's recognized the value of careful preparatory research. In preparation for extensive constitutional revision, most states created special study commissions with mandates to study the constitution and recommend needed changes. One of the greatest efforts was made in Texas where extensive studies were made and a report including the draft document was prepared by a thirty-seven member commission supported by a \$900,000 legislative appropriation. A similar report prepared by a study commission in Arkansas' Seventh Constitutional Convention

(1969-1970) was useful to their Eighth Constitutional Convention. Illinois and Montana also produced an elaborate series of studies. Some states relied on the staff of the Legislative Council for preparatory studies. In Hawaii, the Legislative Reference Bureau updated the extensive series of 17 background studies designed initially to provide information for the 1968 convention. Few special research efforts were made in preparation for most limited conventions with restricted mandates.

The leadership structure of most conventions varies little, differing mainly in the number of vice-presidents. All conventions have a president or chairman, at least one vice-president, a secretary, sometimes a treasurer, a sergeant of arms and often various assistants to these officers, and a staff. Size and specialization of the staff vary greatly, depending mainly on the convention's mandate. Texas had the largest staff of the recent conventions; it ranged from 58 to as many as 266 at various times.

All conventions have a committee organization--most commonly of two types or classes: (1) substantive to cover the subject areas of studies; (2) procedural, to deal with auxiliary matters and functions. Sometimes a steering committee provides the structural framework for the convention's leadership, as in the Louisiana convention. Normally, the substantive committees follow the principal subject matter areas

of the constitutional system. Every convention operates under a set of rules. Some more recent conventions (for example Hawaii) also have a code of ethics for delegates.

CONVENTION PROPOSALS

Invariably, the products of constitutional conventions are featured by reduced verbiage. For example, the new constitution proposed by the Seventh Arkansas Convention in 1970 had 13,573 words in the main body and 3,190 in the schedule, compared with 46,000 words in the 1974 document, as amended. Similar reductions were affected in other proposed constitutions. The Louisiana Convention proposed a new constitution of 26,300 words to reduce its bulky predecessor with an estimated 256,500 words. Other common characteristics of new and revised constitutions are improved style, organization, and format; greater consistency with the federal counterpart, and elimination of much obsolete and statutory matter.

Convention proposals range from a proposed new or revised constitution, through submission of varying numbers of amendments, to a single amendment. All proposals of conventions held in the 1970's have been submitted to the voters; none were proclaimed in effect without popular referendum. The twelve conventions used three principal forms of submission:

(1) Arkansas and North Dakota submitted proposed new constitutions in a single package, and with no alternate proposals. Both were rejected. (2) In three states--Illinois, Louisiana, and Montana--a new document was submitted, with controversial issues separated and voted on individually. The voters approved all three. (3) Five conventions in four states--Hawaii, New Hampshire, Rhode Island and Tennessee--submitted a series of amendments, each addressed to a particular matter or series of related matters. Some were approved and some were rejected.

Twelve of the thirteen proposed amendments by the 1977 Tennessee Limited Convention were approved by the voters. The thirty-four Hawaii proposals were the most successful of all; all were adopted. Because of the success of the Hawaii proposals, the manner of their presentation on the ballot merits some attention. They were presented in two parts on the ballot. The voter had to choose one; he could not vote on both. In the first part, the voter had to vote for or against all proposals collectively as a unit. In the second part, the 34 proposals were listed individually by short title. The voter was instructed to indicate only those items that he opposed; all unmarked items were counted as approved by the voter. The same ballot format had been used successfully in 1968, when the voters approved 22 of 23 proposals.

It should be noted, however, that in the case of Hawaii, a court action has been filed seeking to invalidate the results

of the November 7, 1978 general election dealing with those amendments to the state constitution. That case is now in the Supreme Court of the State of Hawaii, and has not been resolved as of the date of this report.

The remaining convention not yet mentioned is the 1974 Texas Convention of State Legislators/Delegates. The reason-- it made no proposals. The convention rules required approval of proposals by a two-thirds majority of the delegates for submission to the voters. The draft constitution of 17,000 words (as compared with 64,000 words in the 1876 document), incorporating many modernizing features (such as the "sunset" provision for the government agencies) failed by three votes to receive the required two-thirds majority. Thus, the Texas Legislature Convention became the first convention in history to kill its own product, eliciting such labels as "five million dollar bad dream",² and even more uncomplimentary titles. Under heavy pressure and mounting public criticism after adjournment of the convention, the Texas Legislature incorporated the principal substance of the revised constitution into eight constitutional amendments, which were submitted to the electorate the following year. All eight were rejected by a margin of about two and one-half to one.

INNOVATIVE PROPOSALS

The basic ingredients of a "good" constitution long recommended by constitutional reformers are well known to have been incorporated in such successive editions of the Model State Constitution. In his introduction to the revised sixth edition of the model, however, John Bebout reminds constitution makers that, "Strictly speaking, there is no such thing as a model state constitution, because there is no model state".³ Every state is unique and has its own traditions and particular problems. No single set of solutions will fit every state. In full recognition that each innovation must be weighed and evaluated in the light of local needs, some major innovations recommended in convention proposals of the 1970's can be identified. These are grouped in the following paragraphs according to major constitutional areas.

Bill of Rights

Practically all new or revised state constitutions provide added protection for individuals against discrimination, (racial and, in some instances, sexual). The ill fated Texas document would have added "the handicapped". Illinois forbids unequal enforcement and administration of the law. Similarly,

unreasonable invasion of privacy is expressly forbidden in Hawaii, Illinois and Montana. Tennessee eliminated the prohibition against interracial marriages. The proposed North Dakota document would have guaranteed the right of candidates for public office to a fair election.

Suffrage and Elections

Continuing the trend toward liberalizing the requirements for voting and office holding that begin with the adoption of the first state constitutions, the new organic laws include provisions for relaxing residency requirements, establishment of a bipartisan state board of election, reduction of the age of majority to 18, reduction of age qualification for all state offices to 21, and legislative determination of residency and registration requirements for voting.

Reflecting recent problems relating to political campaigns, a Rhode Island constitutional provision requires all candidates for top state offices to disclose election campaign expenditures, and a newly adopted Hawaii amendment requires the legislature to provide for partial public financing of political campaigns and to establish campaign spending and contribution limits.

Legislative Branch

Proposals affecting the legislative branch include: public legislative sessions and committee meetings, annual legislative sessions, reapportionment by bipartisan commission,

election of legislators from single-member districts, authorization for the legislature to convene itself in special session, increase in the term of House members from two to four years, automatic veto sessions, establishment of a legislative compensation commission, staggered terms for senators, and reduction of the required age for candidates for the legislature to 21. Separate alternative proposals in Montana and North Dakota give the voters the option unicameralism vs. bicameralism.

Executive Branch

Many features relating to the executive reinforce the principals of executive unity and functional integration. Proposals in recent new and revised constitutions include: joint election of governor and lieutenant governor, reduction in the number of elective state constitutional officers, election of state officers in nonpresidential years, two consecutive-term limit for the governor, gubernatorial power to reorganize state agencies subject to legislative veto, reduction of the age qualifications for governor and lieutenant governor from 30 to 25, specified procedures for determining gubernatorial disability, amendatory veto power for the governor and elimination of the pocket veto, and limitation of number of executive departments to a stated number, usually 20. The "sunset" provision of the Texas

document provided for periodic legislative review of the executive agencies with requirement that they be abolished unless renewed.

Judiciary

Few, if any, articles of a constitution seem to cause revisers more trouble than the judicial department--perhaps because lawyers comprise most of the membership of convention committees on the judiciary. Among the major proposals are creation of a judicial standards or qualifications commission, and establishment of a salary commission for the courts. The long term standards of judicial reform continue to be highly controversial subjects of constitutional reform; a unified system of courts, appointive or elective judges, promulgation of procedural rules by the state supreme court, and others.

Local Government

Similarly, relatively few innovations have been proposed recently for the solution of the problems of local government other than tax relief. Most proposals in this area provide for extended powers of local home rule for both counties and municipalities. Provision for inter-governmental cooperation and consolidation and reorganization of local government. Few sections of the state constitution are more politically sensitive than those relating to local officers and their powers, and, hence, more difficult to change. In a

number of states, constitutional reform efforts have been wrecked by the opposition of local vested interests.

Finances and Taxation

No area matches taxation and finance in the number of reform proposals. Currently, the most attention is focused on limitations on state and local taxation, spending, and debt. Tennessee, for example, has just approved a formula for limitation of state spending related to increases in the state's economy. Hawaii also has a similar spending limit tied to the growth of the state's economy. Other recent amendments to the Hawaii constitution limits state debt to a percentage of general fund revenues, requires payment of general obligation bonds within 25 years, gives the legislature permissive authority to authorize issuance of special-purpose revenue bonds, establish a tax revenue commission, authorize the legislature to conform state income tax laws to federal income tax laws, and extend the exclusive power to tax real property to the counties.

The most far-reaching change in the area of taxation was California's Proposition 13, initiated by petition and approved last June. This initiative measure, which limits real property taxes to one percent of value, inspired a revolt that has affected all parts of the nation. In 1978, in addition to California, voters approved tax or spending restrictions, or both, in at least eight states. Related

financial proposals were rejected in at least five states.

State Functions

Education has received more attention than any other state function in recent constitutional revisions. Attention has been focused especially on broad protection against discrimination, equalization of educational opportunity, and creation of an effective state board of education.

At least five of the proposed new constitutions expressly state the policy to maintain a healthful environment, and at least three extend to individuals the right to sue polluters. Hawaii now has a constitutional requirement for legislative approval for construction of a nuclear plant and disposition of radio active material.

Subjects of other amendments include lotteries, gambling, the death penalty, authorized interest rates, codes of ethics, and creation of the offices of consumer counsel and ombudsmen. One of the most encouraging provisions for lay citizens is Hawaii's new constitutional requirement that plain language be used in governmental writing.

Constitutional Revisions

Finally, the article that usually receives the least attention of constitution-makers, but is one of the most important parts of the organic law, is the article on amendment and revision of future changes. At least six of the proposed new constitutions provided for periodic submission of the

question of calling the constitutional convention to the voters (at intervals of twenty years in three states, ten years in Rhode Island, and thirty years in North Dakota and Texas). The new Montana constitution omits the former limitation on the number of proposed amendments on any one ballot. Montana and Illinois authorized constitutional initiative, and the Texas document would have included the provisions for calling a constitutional convention. Illinois reduced the size of the majority required to adopt amendments.

SOME GUIDELINES

What possible lessons can be learned from the constitutional reform efforts in the 1970's? Careful evaluation of recent state experiences suggest certain guidelines.

1. The experience reported in all states that have achieved constitutional reform heavily emphasizes the importance of careful advance preparation and competent research service during the convention.

2. The development of a positive public image enhances a convention's chance of success. The experience with the Texas legislator/convention in 1974 which had image problems strongly supports this theory.

3. The convention delegates have a responsibility to educate the people on constitutional issues as well as to

receive their proposals. For most people, constitutional revision is a vague, uninteresting term of little real and practical meaning. An effective public relations and educational program is of prime importance in state constitution-making.

4. Developing effective organization and procedures may have an important bearing on the success or failure of a convention. Placing unrealistic burdens to time, voting requirements, or limitations on delegates may prove too high a hurdle, resulting in failure to place a successful proposal before the public.

5. The best method for placing the convention proposals before the people must be explored and evaluated.

6. Every effort should be made to gain bipartisan support of the proposals and the backing of key people, especially the governor.

7. Although the Constitution of the State of Alaska mandates that the convention be an unlimited one, the use of unlimited conventions has diminished somewhat over the past twenty years principally because of voter rejection of the total proposal. Perhaps the legislature may wish to look into the possibility of amending the constitution to allow limited constitutional conventions.

SUMMARY

In conclusion, unless the legislature calls for a constitutional convention prior to 1982, the question of whether or not to have a constitutional convention will appear on the ballot. It is hoped that this report, dealing with the experience in other states during the '70's will give the legislature and the people of Alaska some ideas as to the pros and cons of having a convention, subjects to explore in constitutional revision, problems encountered by other states and possible solutions, attitudes of the voters, and hints on conducting a successful convention and proper submission of the proposals to the voters.

FOOTNOTES

1. Some of the material in this report have been influenced by the writings of Albert L. Sturm, University Research Professor, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksburg, Virginia.
2. State Senator Ron Clower quoted in the Dallas News.
3. Model State Constitutions, 6th Ed., Revised (New York, N.Y.: National Municipal League 1968).

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Chairman
Rep. Brian Rogers

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

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Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

Staff
Guy Van Doren
Admin. Asst.

October 9, 1980

Members of the Constitutional
Convention Committee

Dear Members:

Enclosed, please find the report submitted to the Committee at the meeting in Juneau on September 24th, as well as the minutes of that meeting, and a letter from the National Municipal League explaining the meeting in Houston.

In conjunction with the meeting in Houston, recognized authorities in constitutional revision will be holding a separate meeting with me and any of the committee members who wish to attend.

During the September meeting, a majority of the committee authorized me and any members of the committee to attend the New York meeting, November 6th and 7th, and/or the Houston Meeting November 14th-18th. If any member wishes to attend either of these meetings with me, please contact me as soon as possible in order that I can make the necessary arrangements. I can be contacted at our office number during the day, or 364-3442 in the evenings.

Since I will be in the East on November 11th, Chairman Rogers will probably hold the next meeting after the Houston meeting.

If you have any questions please contact me or Chairman Rogers.

Sincerely,



Guy A. Van Doren
Administrative Assistant,
Interim Committee on the
Constitutional Convention

GAVD/me

Encl.

P.S. Enclosed is a
travel request
if you want to
attend.

CONSTITUTIONAL CONVENTION COMMITTEE
Minutes of Meeting of September 24, 1980
Juneau, Alaska

The Meeting of the Legislative Interim Committee of the Legislative Council Committee of the Alaska State Legislature regarding Constitutional Convention was called to order at 2:00 p.m. by Representative Brian Rogers, Chairman.

Present were Representatives Rogers, Gardiner and Hayes and Senators Ziegler and Mulcahy. Also present were Guy A. Van Doren, Administrative Assistant, and Doug Pope, Attorney.

Retention of counsel was discussed by the committee members. Mr. Pope briefed the committee on Mr. Wagstaff's draft opinion regarding the exclusion of minors for cash distribution of permanent fund dividends.

Mr. Van Doren gave a summary of the work he has completed and stated that he had contacted people who are recognized experts in the field of constitutional conventions. Letters have been sent to the National Municipal League; he has received a list of 15 recommendations; six people had contacted him expressing interest in meeting with this committee. There was a summary of questions in packets given to the committee members. Mr. Van Doren stated that the National Municipal League will meet in Houston in November and that other people from other states will be in attendance and available to meet with this committee the day before.

Representative Rogers stated that the bill relating to the calling of a constitutional convention and establishing a constitutional convention committee was vetoed by the Governor last year because members of the Commission included legislators and administration people and there was a question of separation of power. He stated the meeting with the recognized experts is a good idea. After discussion, it was decided that Representative Hayes and Guy A. Van Doren would meet with experts in New York.

Translation to Yupik of materials pertaining to the constitutional convention was discussed. A contract with the University of Alaska will be available for consideration at the next meeting. The booklet published in Hawaii for Hawaii's constitutional convention was discussed.

The question of continuing the \$25,000 contract for the memorandum on constitutional constraints into the second phase was discussed. Senator Ziegler stated that the committee should wait and keep expenditures down to a minimum. It was agreed by the members of the committee to table the second phase and advise Mr. Wagstaff not to proceed until requested to do so.

we are to approve today grants private inholders carte blanche access across national forest and public lands nationwide.

These are a few of the flaws in the Senate bill. They are serious but not fatal. They should not keep us from passing this bill; but we should not forget these flaws either. It is my hope that in the months ahead we can move to correct some of the more glaring omissions and errors. Passage of this bill brings to a close a great debate on Alaska and our proper stewardship of its national resources. But it should not deter us from continuing our agenda to safeguard this unique environmental heritage for the American people.

Mr. UDALL. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. FISHER).

Mr. FISHER. Mr. Speaker, I rise to support the proposal that is being put forward. It is not my first choice for a bill on this subject, but it is a good position, an honorable one, and I certainly think we should adopt it and settle this matter during this Congress. It is the best chance we will have at it for a long time.

I have personal reason for supporting this. When I was much younger, I spent several years in Alaska, most of it in the field. I know a good bit in the early days of the territories and land tracts that are being set aside now in various categories for protection. I even wrote a Ph. D. dissertation on the conservation and economic development of Alaska many years ago.

I remember at that time making the argument that if you set tracts of land aside in protected status, later on if you desperately need to go there and extract resources, you can do it; but if you do not set the land aside, but allow development helter-skelter to take place, it is irreversible, especially in a very fragile environment such as is much of Alaska; so by all odds, the prudent thing to do for the benefit of the State of Alaska, which was a territory when I was there, is to do exactly what we are doing, to set large tracts aside in appropriate categories and leave them in this protected status until such time as they may desperately be needed for other purposes, but I would hope they can stay forever in these protected categories; so although it is not my first choice, it is a good choice and I strongly urge my colleagues forthwith to vote for this.

Mr. UDALL. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. BONIOR).

Mr. BONIOR of Michigan. Mr. Speaker, I, too, would like to take this opportunity to commend the chairmen of the appropriate committees, the gentleman from Arizona (Mr. UDALL); the gentleman from Ohio (Mr. SEIBERLING); the gentleman from New York (Mr. MURPHY); and the gentleman from Louisiana (Mr. BREAU) for the fine work they have done on the bill and also to mention the persistence and the effort of the coalition who worked very hard for a good number of years to put together a package which I think will live as a monument to this Nation.

Finally, I would like to pay tribute to our President, who I think stood fast and is to be commended on the work that he and the administration did on this particular bill.

I had the opportunity, Mr. Speaker, the rare opportunity and privilege to hike the Brooks Range and to canoe the Kenai and the wonders of Alaska. I just would hope this Congress and perhaps future Congresses would keep in mind the needed protection for areas such as the Copper River Delta, the Cheikad area and the North Slope.

I again wish to commend the chairman of the committee.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may revise and extend their remarks on this bill.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. UDALL. Mr. Speaker, I have no further requests for time. I reserve the balance of my time.

Mr. YOUNG of Alaska. Mr. Speaker, I yield myself such time as I may consume.

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, before I go into the nature of the great historical period of time which we are about to enter into when we vote on this bill, I would like to commend the chairman of the full committee, the gentleman from Arizona (Mr. UDALL); the gentleman from Ohio (Mr. SEIBERLING), for their work in locking my State up. They have done it with great honor and with a great deal of forthrightness and have been straight with me all along. They told me when they were going to put it to me. I do compliment them for that. They have been honest in their decisions. I respect anybody's beliefs and they do believe they are doing what is right for the great State of Alaska.

I want to make it perfectly clear to my colleagues that I will not be voting for the passage of this legislation, because it is my feeling that this bill that they are saying is not what they want is not what I want, either. It still is an environmentally leaning bill.

I will tell you, though, it does contain many provisions that are good for the State of Alaska, and for the listening audience and those who are here listening to me today, in this bill the good things are that in the Statehood Act, lands are conveyed to the State. The existing Carter monuments are repealed. Access to inholdings and traditional access are guaranteed. There is maintenance of the timber industry in the southeast and it is not being overharvested. It is being harvested as it should be. There are provisions for mineral developments, such as borax, in Chignik Creek, Greens Creek, et cetera. There are exemptions for the wilderness studies by the BLM lands.

Most key mineral areas are open. There is a provision that there will be no more executive withdrawals.

There are oil and gas studies and there are gas and oil leasing on the refugees. All these things are in the bill.

The thing that I object to most in this bill is it never should have been before us in the first place. Under the Statehood Act we were guaranteed 104 million acres of land, of lands that were not reserved at that time. Under this bill, there are lands still in conflict that the State will not be granted. There are areas of land that have been closed to hunting, but that will be addressed the next session of Congress.

I believe that the next session is going to prove that Congress can see the wisdom of allowing lands to be open to the people. All Alaskans have ever wanted and have ever asked is that they have the rights that were guaranteed to them under the Constitution, that they have the right to utilize these lands for their enjoyment and for their economic benefit; primarily their enjoyment above all. The idea that Congress can close down lands and that they cannot be utilized has been a sore in the eyes of all Alaskans.

Mr. SYMMS. Mr. Speaker, will the gentleman yield?

Mr. YOUNG of Alaska. I yield to the gentleman from Idaho.

Mr. SYMMS. Mr. Speaker, I thank the gentleman for yielding.

I would just like to ask the gentleman if the statement I made on the floor about the vote in Alaska where over half of the people voted to reconsider their statehood, if the gentleman agrees that this process of land lockup and the management on the part of the administration of those federally owned lands in Alaska is the reason behind that vote.

Mr. YOUNG of Alaska. I may answer the gentleman, that is absolutely right. The frustration that is felt in Alaska is not in anyone's imagination. It is there. When people's rights are put upon by the Federal Government, then they begin to get very frustrated.

I hope that the election last November 4 brought this home to most of the people on this floor, that there is an unrest out there in the general public that the Federal Government has taken too many rights away from people. That commission was voted upon to study whether the Statehood Act had been fulfilled as far as the Federal Government goes.

Mr. SYMMS. Mr. Speaker, if the gentleman will yield further, I would also like to ask the gentleman, is it not true that there are millions of acres of land in Alaska that are being locked up that have high potential for critical minerals, as well as oil and gas?

Mr. YOUNG of Alaska. Yes; there are many acres locked up and it is my hope that next year as we come back to this Congress that those areas that have high potential will at least be explored, because when they are explored then we will know when, where, and how to retrieve the resources that this Nation is going to have to have.

The gentleman knows as well as I do that if you think the OPEC crisis is bad, just wait for the mineral crisis. If this Congress does not wake up to the fact

The next meeting of this committee will be November 11, 1980 and a further meeting will be in December, 1980.

Mr. Pope briefed the committee on Mr. Wagstaff's memorandum and submitted the same in written form to the members.

Mr. Van Doren was directed to prepare a draft of a booklet for the public regarding constitutional convention issues. There was discussion regarding the booklet influencing the vote.

There was discussion regarding a federal constitutional convention being limited to one issue, which should be addressed by this committee.

Spending limitations was discussed and will be addressed at the next meeting of this committee. Mr. Van Doren will look for people working on federal constitutional conventions.

Senator Ziegler brought attention to the fact that Representative Parr killed the balanced budget resolution during the last Alaska Legislative session.

Representative Rogers asked for further questions. There being none, the meeting was adjourned at 2:45 p.m.

Landa Krossa,
Secretary

Chairman
Rep. Brian Rogers

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Pouch Y. Rm. 107
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hays

Staff
Guy Van Doren
Admin. Asst.

REPORT TO THE INTERIM COMMITTEE
ON THE CONSTITUTIONAL CONVENTION

I. Work Performed August 29, to September 22, 1980

1. Reports of last Interim Committee sent to members.
2. Individuals recommended by the National Municipal League as Constitutional Revision Authorities contacted relating to the possibility of meeting with staff and/or committee members to discuss:
 - (a) Revision of Alaska Constitution
 - (b) Formation of a Constitutional Commission
 - (c) Planning for a successful convention
 - (d) Comments on last years work

*Note: All persons contacted were supplied with copies of the work accomplished last year plus a copy of the Alaska State Constitution.

3. Review of new literature relating to constitutional developments in other states.
4. First draft of Constitutional Commission resolution
5. Planning for this meeting and for possible projects to be undertaken.

II. Response to proposed meeting with constitutional authorities.

1. Mr. Albert Sturm, Blacksburg, Virginia.

Mr. Sturm is the author of a book on the Michigan Constitutional Convention, numerous books on constitutional revision, of Thirty Years of State Constitution Making 1938-1968, and of the Annual Constitutional Developments Summary in the NATIONAL CIVIC REVIEW and the Book of States.

Mr. Sturm has expressed interest in meeting with me and will be available during the week of October 13-17, or possibly some later date.....SEE ENCLOSURE "A"

2. Mr. William Cassella, Jr., New York, New York

Mr. Cassella is Executive Director of the National Municipal League and participated in the Alaska Constitutional Review Conference held in Fairbanks in 1976.

Mr. John Bebout, Cape Cod, Mass.

Mr. Bebout has been associated with revision efforts since the successful move to adopt a new constitution in New Jersey in the 1940's and was a major consultant to the Alaska Convention.

Upon receiving my meeting request, Mr. Bebout contacted Mr. Cassella and suggested that he convene a meeting at the National Municipal League offices in New York, of several people in the general geographical area whom I have already contacted. The suggestion was that myself and /or several committee members could attend. Our committee would have to defray the costs of the people attending. However, the proposed attendees are all located within a 150 mile radius of New York.

Notwithstanding that suggestion, Mr. Cassella is available either the 9th or 10th of October or from October 23 to the end of the month, or November 6 and 7.

Another possibility suggested by Mr. Cassella, is a meeting held in connection with the Leagues' National Conference in Houston, November 15-18. The meeting could take place on November 14th and Mr. Cassella has stated that several people on my list of contacts will be attending the League meeting. This would eliminate a great deal of traveling. In conjunction with that meeting, I have been invited to participate in the Agenda Building program for the National Municipal Leagues' National Conference described in the memo accompanying this report.

SEE ENCLOSURES "B" AND "C".

If the committee decides the above plan is feasible, members would be able to attend the conference as well as the meeting with the constitutional people.

3. Mr. George Braden, Albany, New York

Mr. Braden has been involved in revision efforts in Connecticut, New York, Illinois and Texas, and has co-authored books on the Illinois and Texas constitutions.

Mr. Braden is available throughout most of October and early November and is one of the individuals recommended to attend the collective meeting at the Municipal League offices.

SUMMARY: Since to this date, I have received responses from four out of the five persons I have contacted, and in order to save time and expenses, I would recommend, if the committee feels it is in the best interest of the purposes of the committee to meet with these people, that a meeting be called in New York, at the League offices, approximately the 9th or 10th of November and that another meeting be scheduled on the 14th of November, in Houston. If Mr. Sturm does not plan to attend the Houston meeting, he could be seen in between time. Also, the other work to be undertaken in New York and in Washington D.C. can be accomplished on the same trip. SEE ENCLOSURE "D" FOR OTHER ORGANIZATIONS WITH WHICH TO MEET.

III. Possible Projects For the Committee to Undertake

1. Meet with recognized authorities on Constitutional Revision
 - (a) Information
 - (b) Send work already accomplished for their review and comments
 - (c) Planning for a successful convention.
 - (d) Evaluate each person for possible selection as consultant to either the Constitutional Commission or to the actual Convention, should one be called.
2. Report on Federal Constitutional Convention
 - (a) Limited vs. Unlimited
 - (b) Effects a National Convention would have on the States, especially Alaska.
3. Prepare informational material to be handed out at Public Hearings.
4. Prepare materials for members of the committee.
5. Prepare informational brochure on "What Is a Constitutional Convention" for distribution.
6. Prepare scripts and select persons to be involved in use of the Legislative Media Center and teleconference use.
7. Develop questions for consultants
8. Preparation of workbook for Commission.
9. Public hearings
 - (a) Preparation for
 - (b) Summary report following the meetings
10. Discuss possible projects with the League of Women Voters
 - (a) Study on their prospectives Pro or Con
 - (b) What issues do they feel should be addressed
 - (c) Their participation in the future.



VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Blacksburg, Virginia 24061

CENTER FOR PUBLIC ADMINISTRATION AND POLICY (703) 961-5133/5630

10 September 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y, Room 107
The Capitol
Juneau, Alaska 99811

Dear Mr. Van Doren:

This is in reply to your letter of September 4. Thank you for sending me the materials relating to the work of the Committee on the Constitutional Convention. I look forward to examining these items more carefully.

I shall be glad to meet with you during October. The time that would be most convenient for me would be the week of October 13-17, preferably early in the week, although I could meet at another time if this does not fit well into your schedule. Also, I suggest that you might prefer that I meet you in Chicago, rather than your coming to Blacksburg. We can resolve these matters when you get back to me. My office telephone is Area Code 703, 961-5197.

As you may know, for the past ten years I have been preparing the section on "State Constitutions and Constitutional Revision" for The Book of the States. In updating the material on constitutional commissions for the next volume, I want to include information on the Special Interim Committee on the Constitutional Convention. I am enclosing, therefore, two forms on state constitutional commissions that I would appreciate greatly your filling out as completely as possible and returning to me.

I look forward to hearing from and meeting you in the near future.

Sincerely,

Albert L. Sturm
Professor Emeritus

ALS/sl

Enclosures

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Sponsor of

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86th Annual Conference—Houston—November 15-18, 1980

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William K. Woods, Field Consultant
Frank P. Grad, Counsel

September 12, 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y, Rm. 107
Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

I was pleased to receive your letter of September 4 and the various enclosures. I am glad that you are able to follow-up on some of the people who were mentioned in the letter sent from the National Municipal League early in the summer.

You asked for my schedule during October and early November. The best time for me would be from the 23rd of October until the end of the month. I could also meet with you on the 9th and 10th or November 6 and 7.

I had a call from John Bebout who suggested the possibility of my convening a meeting of several of the people you plan to see here at the National Municipal League. It would be possible to have several of them gather here for a one-day session which might conserve your time. It would be necessary for your committee to defray their expense traveling to New York which might increase the cost but would have the advantage of an exchange involving several people, e.g., a session involving Bebout, Braden, Cornwell and me could probably be arranged.

Another possibility would be to have a session in connection with the League's National Conference in Houston, November 15-18. You might be able to have a group meet on Friday, November 14 in Houston before the Conference begins. I am sure that several of the people on the NML list will be at the Houston meeting.

Carl H. Pforzheimer Building, 47 East 68th Street, New York, N.Y. 10021
Telephone: (212) 535-5700

Mr. Guy Van Doren

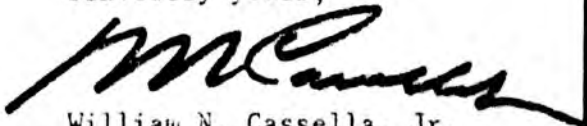
-2-

September 12, 1980

In connection with the Houston meeting I am enclosing a memorandum alerting you to an invitation which you will be receiving shortly from George Gallup and Bill Scranton, two former League presidents. You will be among those invited to participate in the agenda building program described in the memorandum. You will note that this will be held on November 15 and 16. I hope you will be able to adjust your calendar and extend your stay in the "lower 48" through November 16.

I look forward to hearing from you.

Sincerely yours,



William N. Cassella, Jr.
Executive Director

WNC/gm
Enclosure

86th NATIONAL CONFERENCE ON GOVERNMENT
The Shamrock Hilton
Houston, Texas
November 15-18, 1980

July 7, 1980

1980 CONFERENCE MEMORANDUM #2

Conference Theme: CIVIC PARTNERSHIP FOR PROGRESS IN THE 1980s

As in previous years, the 86th National Conference on Government will bring together a unique combination of citizens and officials with a common interest in improving the effectiveness of self-government. It will provide an opportunity for them to exchange experiences and ideas, and to focus particularly on the issues which must be faced in the 1980s. A special effort is being made to involve an emerging generation of civic leaders in this Conference and in the development of programs necessary to reverse fragmentation caused by single-interest politics and thus enhance the institutions and processes for accommodating a variety of interests--the CIVIC PARTNERSHIP FOR PROGRESS.

Reactions to the proposed substance and format outlined in Conference Memorandum #1 were affirmative and contained suggestions which are reflected in the tentative program included in this memorandum.

Following the pattern initiated in 1979 in Detroit, the Houston Conference will make maximum use of the November 15-16 weekend and will conclude by midday on Tuesday, November 18.

The tentative program is as follows:

Registration, Saturday, November 15, 8:30 - 11:00 AM
NML Committee meetings, November 15, 9:00 - 11:00 AM

Saturday, November 15 and Sunday, November 16

All Sessions: Building the Civic Agenda for the 1980s

Special invitations ~~have been~~ ^{are being} extended to a cross section of promising younger leaders from around the country, both officeholders and individuals with important civic roles, to join with League officers and members in developing the civic agenda for the 1980s. The program will include presentations at plenary sessions and small-group roundtable discussions.

Focus will be on defining the issues which must be faced by a federal system overloaded by intergovernmental fiscal complexities and burdensome regulations, and questioned as to its effectiveness,

efficiency, accountability and equity. All participants will receive background materials before the Conference, including analytical reports of the Advisory Commission on Intergovernmental Relations.

The objective of the small-group sessions will be to produce consensus with respect to the Civic Agenda necessary to redefine the roles of all levels of government, overcome the hazards of the overload, strengthen state and local institutions, and create productive public/private/voluntary partnerships. The consensus will be on an agenda of questions which must be faced, not specific answers. Developing and implementing answers will be the task of the decade. All those listed as giving presentations have been invited.

Saturday, November 15

11:00 AM - Opening Plenary Session

Keynote Presentations: Bruce Babbitt, Governor of
Arizona
Richard Thornburgh, Governor
of Pennsylvania

12:30 PM - Buffet Luncheon - small-group discussion rooms

1:00 PM - 1st session - small groups

2:45 PM - 2nd session - small groups

4:30 PM - Afternoon Plenary Session

Presentations: Fay H. Williams of Indianapolis
(Coalition Building)
James R. Ellis of Seattle (Civic
Commitment)

5:30 PM - 7:30 PM - Reception

Sunday, November 16

10:30 AM - Plenary Session on Civic Agenda for the 1980s

Presentations: James L. Hetland, Jr., of Minneapolis
(Regional Institutions)
Gail Levin of Dayton (The Media's
Role)
Neal R. Peirce--(The Civic Agenda-
summations of consenses reached
in small-group discussions)

12:00 Noon - Brunch

2:30 PM - National Municipal League Membership/Council meetings (open to all participating in Conference).
Report of Committee on NML Goals and Priorities for the 1980s and an open discussion providing an opportunity for League officers and members to con-

sider committee recommendations on current and proposed League programs in light of the deliberations on the "civic agenda for the 1980s" just concluded, as well as individual experiences and concerns.

5:30 - 7:30 PM - Reception - Opening of All-America Cities Exhibits

The All-America Cities Jury Hearings will be held November 17, 9:00 AM - Noon and 2:00 - 5:00 PM.

Monday, November 17

The general and concurrent sessions for November 17, to involve participants from all parts of the country, have been planned with the cooperation of Texas leaders to provide an opportunity for citizens of the host area to discuss matters of local concern with those having faced similar problems elsewhere. The concurrent sessions in the morning deal with significant problem areas and those in the afternoon with instruments for dealing with them.

9:00 AM -- General Session - Public/Private/Voluntary Partnership

10:30 AM -- 4 Concurrent Sessions

- A. Urban Development/Urban Conservation
- B. Energy - State/Local Initiatives
- C. Living with Fiscal Constraint
- D. Intergovernmental Partnership or Regulatory Maze?

12:15 PM - Luncheon

Address: William M. Ellinghaus, President
American Telephone & Telegraph Company

2:00 PM -- 4 Concurrent Sessions

- A. Representing Changing Communities
- B. Leadership and the Civic Partnership
- C. Citizens Organized - In the Neighborhood
- D. Expanding the Knowledge Base - Research and Service

3:30 PM -- General Session - Strategies for the 1980s -- Sorting Out Roles: Local, Regional, State and Federal

Tuesday, November 18

9:00 AM -- 4 Special Workshops

- A. Charter Clinic
- B. Civic Video
- C. Reapportionment/Redistricting
- D. All-America Cities Network

National Municipal League officers and council members will preside at all sessions.

Chairman
Rep. Brian Rogers

INTERIM COMMITTEE
ON
THE CONSTITUTIONAL CONVENTION

Members
Sen. Hohman
Sen. Mulcahy
Sen. Sackett
Sen. Ziegler
Rep. Gardiner
Rep. Hayes

Pouch Y, Rm. 10
Capitol Bldg.
Juneau, Alaska
99811
(907) 465-3743

Staff
Guy Van Doren
Admin. Asst.

September 4, 1980

The Honorable Brian Rogers
Chairman,
Special Interim Committee on
The Constitutional Convention
P.O. Box "K" College Branch
Fairbanks, Alaska 99708

Dear Brian:

Enclosed, please find a draft copy of a resolution I drafted relating to a Constitutional Convention Commission. I have no pride of authorship as I drafted it as the beginning of an idea.

Also enclosed is a copy of the letter I sent to recognized authorities on Constitutional revision and the letter from the National Municipal League with the list of people checked off that I sent a letter to. I tried to choose persons in a adjoining geographical area to avoid excess traveling expenses. I would have loved to include Hawaii. I also chose a couple of people who are familiar with Alaska and the Alaska Constitution.

If the Committee decides that the trip is worthwhile, I could also spend time with (1) The National Municipal League (2) Political Scientists at Yale, Harvard, Columbia, Princeton and possibly Northwestern and Chicago; (3) American Political Science Assn.; (4) Institute of Public Administration of New York; (5) Public Administration Service; (6) Legislative Reference Service-Library of Congress, and: (7) National Taxpayers Assn. These are all in the same area as the other people.

As you probably know by now, Mr. Wagstaff was out of the office until the 8th. I will call him then and let you know the results when we talk again.

I have enclosed an authorization note in order that I will be able to use Landa if it is necessary. She has indicated that she will be able to go to work full time on November 1, 1980 if we need her. She is willing to work on Saturdays or evenings if we need her before November. This is alright with me since I feel that I can handle any typing, unless there is something heavy going on until November. She did indicate that she will attend the meeting we are planning to have in Juneau.

Guess that's it for now. See you in Juneau and will be talking to you shortly.

H. Van Doren



STATE OF NEW YORK

DEPARTMENT OF LAW

ROBERT ABRAMS
ATTORNEY GENERAL

ALBANY, N.Y. 12224
Telephone: (518) 474-4318

September 15, 1980

Mr. Guy A. Van Doren
Administrative Assistant
Special Interim Committee on the
Constitutional Convention
Pouch Y
Room 107
Capitol Building
Juneau, Alaska 99811

Dear Mr. Van Doren:

I shall be happy to meet with you any time in October except on the 9th through the 15th and any time early in November. I assume that this would be here in Albany. New York City is possible if the meeting is on a Friday or a Monday and the weekend is convenient for my son with whom I would stay.

Sincerely yours,

A handwritten signature in cursive script, reading "George D. Braden".

GEORGE D. BRADEN
Assistant Attorney General
in Charge of Opinions

SCOMM

#27:10

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

A NEW CONSTITUTIONAL CONVENTION FOR ALASKA?

THE LESSONS OF HAWAII 1978

prepared for

Interim Committee on the Constitutional Convention
of the Alaska State Legislature
Sen. George Hohman and Rep. Brian Rogers, Co-chairmen

by

Victor Fischer
221 E. 7th Ave., Anchorage, Alaska 99501

March 10, 1980

Preface

This paper is part of a series of studies sponsored by the Alaska Legislature's Interim Committee on the Constitutional Convention to examine issues pertinent to the 1982 referendum on whether or not Alaska should hold a constitutional convention.

Previous papers in the series by this author covered (1) various aspects of calling and arranging a constitutional convention, (2) considerations that need to be taken into account in deciding whether or not to call a convention, and (3) preliminary examination of issues and topics that might be raised in considering revision of Alaska's constitution. The current paper reviews Hawaii's 1978 constitutional convention and the constitutional amendments in which it resulted.

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Introduction

Hawaii has served as a model for Alaskans before, and once more we have something to learn from Hawaii's experience.

When Alaskans were fighting for statehood in the early 1950's, the idea of writing a constitution for the future state was repeatedly considered. A well designed document would prove to the U.S. Congress and the nation that Alaska was politically mature and ready to become a state. Moreover, Hawaii statehood advocates had written a constitution in 1950, and greater parity in the common quest would accrue if Alaskans also drafted a state constitution.

Alaska's constitutional convention met in 1955. Together with the National Municipal League's Model State Constitution, Hawaii's document provided a basic guide on constitutional substance and form: emphasis on fundamental policies and basic governmental structure, streamlined institutions to serve the needs of a modern state and its people, a brief and concise document. These concepts are fully reflected in Alaska's constitution, which contains a number of provisions derived directly from Hawaii's earlier work.

Now, in the 1980's, Hawaii can once more provide invaluable guidance to Alaska. In 1982, Alaskans will vote on whether or not to hold a new constitutional convention. Unlike the 1955-56 convention, which was held in the context of the unifying statehood cause, a divided Alaska and uncertain political environment would face a future constitutional assembly. This problematic situation greatly beclouds the answer as to whether a new convention would be beneficial to the state and its people.

Well, Hawaii held a convention during these frequently confused and disturbed times. Its review and rewriting of the state constitution took place in 1978. It was the post-Watergate era, the period of Proposition 13. Distrust of government, and particularly the legislature, was high. There was conflict between those who believed in a Hawaii for Hawaiians and others who wanted to retain the "aloha spirit" and greet all newcomers. Divisive issues included economic development, environmental protection, Native rights, public employees collective bargaining and right to strike, resources policy.

Hawaii's resultant convention encountered serious problems of organization and functioning. Delegates made more than one hundred changes in the constitution. Some of these changes dealt with truly basic matters, while a very large number are purely legislative in nature. Some revisions are quite significant, while others appear to an outside observer as unimportant and even frivolous. Interestingly, both convention participants and observers are in retrospect highly critical of the work and products of the constitutional convention. Many now believe Hawaii would have been better off without a convention. Others simply wish it had been better.

Rather than drawing simple conclusions out of Hawaii's extremely complex 1978 constitutional convention experience, this paper reviews what transpired and examines the reasons for some of the actions and results. Readers can then draw their own interpretations, based on their own concerns, values, and perceptions.

Learning about Hawaii's 1978 constitutional experience was but one of the personal benefits I derived from preparing this analysis. Greater yet was the pleasure of meeting and communicating with some wonderful Hawaiians, without whose help this would have been a rather dull exercise. I want to

particularly acknowledge the forthright and cooperative sharing provided by these members of the 1978 Hawaii convention: Frenchy De Soto, Paul Di Bianco, Walter Ikeda, William Paty, and John Waihee. Others most helpful were Sandy Ebesu of HGEA, Richard Kosaki and Norman Meller of the University of Hawaii, and Pat Shutt of the League of Women Voters.

Very special thanks go to Mike Meriwether, who initiated me to the who's who and the facts of public life in Hawaii and literally opened doors to the people I needed to see. And as always, very special appreciation and love go to my good friend Tom Dinell and his marvelous family, for everything.

I do trust that in the retelling and interpreting of Hawaii's constitutional revision story, I have not done any significant injustice to the differing points of view to which I was exposed. My need was to look at events in terms of what Alaskans could learn from our sister state. So I hope that my friends, old and new, will forgive any transgressions and permit me to someday again visit their warm and delightful state.

Background to 1978 Convention

Hawaii's first constitutional convention was held prior to statehood and was, as Alaska's, part of the quest for statehood. The convention, which met from April 4 to July 22, 1950, consisted of 63 delegates.

The 1950 constitution is a relatively short document (approximately 14,000 words), staying with basic fundamentals: a bicameral legislature of a 25-member senate and 51-member house of representatives, only two statewide officers--governor and lieutenant governor, an executive branch consisting of no more than 20 principal departments, a supreme court and circuit court (where judges are appointed by the governor and subject to confirmation by the senate), and local governments under the control of the state legislature. All in all, Hawaii's 1950 constitution, in the words of Prof. Norman Meller, "showed and was meant to demonstrate how thoroughly the people of the Islands were imbued with American political and cultural traditions."¹

Hawaii held another convention prior to the one that is the primary focus of this paper. A convention was held in 1968 to deal with the U. S. supreme Court mandate that the legislature be reapportioned on a one-man one-vote basis. Aside from legislative apportionment, other amendments proposed by the convention and ratified later in 1968 strengthened certain aspects of the Bill of Rights, liberalized voter qualifications, authorized a presidential preferential primary (not yet implemented by the legislature), made changes in legislative procedures, lengthened the term of justices of the supreme and circuit courts, changed the state

¹ Norman Meller, With an Understanding Heart: Constitution Making in Hawaii. New York: National Municipal League, State Constitutional Convention Studies No. 5, 1971, p. 84.

and county debt limits, gave local governments more control over their internal organizations, required each jurisdictions to adopt a code of ethics, provided for collective bargaining for public employees, and took care of a number of other minor issues. Only one amendment was turned down by the electorate: the proposal to lower the voting age from 20 to 18.²

The 1968 convention had been called through popular referendum held November 8, 1966. Unlike Alaska, a convention cannot be called by the legislature; instead, the legislature is given specific authority to submit to the electorate at any general or special election the question "Shall there be a convention to propose a revision of or amendments to the Constitution?" Further, as in Alaska, provision was made for a periodic referendum: "If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period."³

A question arose in 1976 as to whether the convention proposition should again be put before the voters at the November 2, 1976 general election or should be held off until the 1978 general election. The Hawaii attorney general ruled that the ten-year period had begun after the last day the question was submitted to the electorate and would,

² Richard H. Kosaki, "Constitutions and Constitutional Conventions of Hawaii," The Hawaiian Journal of History, vol. XII, 1978, pp. 125-126. (Kosaki is a professor of political science at the University of Hawaii. The article was written prior to beginning of convention.)

³ The Constitution of the State of Hawaii, Article XV, Section 2. The ten-year referendum provision varied somewhat from a similar proviso in the Alaska constitution: the proposition had to be put before the voters in Hawaii every time that the question had not been voted on during a 10-year period, while in Alaska the question is put on the ballot only if there has neither been a referendum on the issue nor a constitutional convention during such period.

therefore, not expire until November 8, six days after the 1976 election. As a result, he held that the convention question should not be put until 1978.

However, after a court challenge and strong public expressions in behalf of a referendum, the legislature decided to place the question before the voters in 1976. The result was overwhelming approval: 199,831 (74 percent) in favor, 69,264 against.

Professor Kosaki notes: "This rather large affirmative vote may have surprised some political observers as, unlike the period before the 1950 and 1968 conventions, there appeared to be no single overriding or pressing issue. Perhaps Hawaii shared with the rest of the nation a general dissatisfaction with government following Watergate. Public interest groups such as Common Cause and the League of Women Voters not surprisingly pushed for a constitutional convention as a healthy and democratic device to review basic government organization and procedures. Special interest groups saw yet another opportunity to write their platforms into a Constitution. The Honolulu dailies, particularly the Honolulu Star-Bulletin, editorialized in favor of a constitutional convention. Few political leaders, despite their private reservations as to the "need" for a convention, would publicly oppose the holding of another constitutional convention. As election time approached, most of Hawaii's political leaders said that they favored the holding of a constitutional convention although there seemed to be little agreement as to what major issues should be addressed."⁴

One convention delegate summarized the general opinion that the 1976 referendum vote on holding the convention was so heavily in favor because

⁴ Kosaki, pp. 126-127

(1) the public generally did not concern itself with specific issues, (2) there were no strong reasons not to have a convention, no one was against it, so why not do it? and (3) it just sounded like a good idea, a "motherhood issue."

The pre-convention period was characterized by extensive preparatory work and attempts to define constitutional issues. The Hawaii Legislative Reference Bureau prepared and widely distributed for the referendum election an informal brochure: "The Constitutional Convention: Yes or No," listing the kinds of subjects that a convention might consider. Subsequently, the Legislative Reference Bureau provided convention delegates with thorough research on constitutional issues in its Hawaii Constitutional Convention Studies 1978.

The League of Women Voters of Hawaii Education Fund conducted a major public education campaign prior to the 1978 convention. A simple popular and well-illustrated brochure described the basic purposes of a convention and summarized key issues that delegates might face. The League held community meetings throughout the state, with the particular aim of involving people who had not usually participated in the political process of revising the state constitution. Each of the meetings considered a variety of issues and covered any topic that participants proposed. Results of these meetings were later reported to the convention. In addition, the League prepared an in-depth issues analysis for the convention, based upon public discussions and related research. Throughout, part of the League's purpose, was to trigger the imagination of delegates and to broaden the scope of their considerations of issues that might not be raised as part of conventional review processes.

Other activities included extensive newspaper coverage and such special projects as a wide-ranging poll of Hawaii public opinion concerning the convention prepared for the First Hawaiian Bank and issued in a 136-page report.

Although "there was general agreement that there was little or no consensus as to specific major issues the convention should address,"⁵ a substantial list of issues did emerge by the time the convention met.

Pre-Convention Issues

The list of questions, problems, and issues raised for possible consideration by Hawaii's 1978 Constitutional Convention is almost endless. The following "laundry list" is presented to show what the convention faced as well as to provide an indication of what might be in store if Alaskans should decide to review and revise their constitution:

Declaration of Rights: Establish a right to privacy; strengthen individual rights regarding search and seizure, wiretapping, etc.; establish right to freedom of choice and self-reliance in all matters of personal nature; include right to a job; redefine role of grand jury; stricter penalties, for crimes, mandatory sentencing, capital punishment.

Legislature: Unicameral versus bicameral, split sessions, limit tenure to two consecutive terms, fix legislative salaries in constitution, limit number of bills that can be introduced in each legislature, provide adequate advance publicity on all proposed laws before final vote, elect legislators in non-partisan elections.

⁵ Kosaki, p. 127.

Executive: Limit tenure of governor and lieutenant governor to two terms, give lieutenant governor more responsibility, elect attorney general and county prosecutors, limit governor's right to withhold appropriated funds, limit governor's control over budget.

Judiciary: Provide merit selection and election of judges, create an appeals court, change existing ten-year appointment of judges.

Elections: Establish open primary, create limit on campaign spending, limit terms of all elected officials.

Apportionment: Provide for true representation of each island and district.

Education, Health, Welfare: Change method of selecting board of education, give counties more power over schools, define powers of university board of regents; establish right to a healthful environment, provide for better and lower cost housing; establish stricter requirements for welfare recipients.

Resources, Environment, Growth: Include more specific provisions about conservation of natural resources, provide better protection of conservation land and preservation of parks, protect agricultural land, increase citizens role in decisions about land; provide for energy conservation; permit individuals to sue to protect resources; limit growth, limit migration, provide referendum on population growth, emphasize quality growth.

Finance: Establish more control of government spending and stricter debt limits; limit amount of property tax on individual homes; require balanced budget; include a financial impact statement with each bill considered by the legislature.

Local Government: Clarify state and county roles, give more power to counties, make each island a separate county, incorporate municipalities, abolish counties, give counties more taxing power.

Initiative and Referendum: Make constitutional provision for initiative, referendum, and recall.

Miscellaneous: Limit right of government workers to strike, limit number of days public and private employees may strike, open government collective bargaining sessions to public; decriminalize marijuana; establish residency requirements for state and local jobs; require a code of ethics for all government employees; establish guidelines for preservation of Hawaiian heritage.

Although there may have been no consensus about major issues to be faced by the 1978 convention, it can be seen that there was no shortage of topics for its consideration. A surprising number of the above-listed items ended up among changes adapted by Hawaii's delegates.

1978 Election; the Delegates⁶

The 35 percent voting turnout in the 1978 special election to select convention is the lowest recorded for elections in Hawaii. Although a low turnout is generally predictable for special elections, most Hawaiian observers were somewhat surprised inasmuch as in 1976 over 70 percent of the registered voters cast ballots on the proposition of holding a constitutional convention, voters approving it by a three-to-one margin. Furthermore, according to the First Hawaiian Bank poll held

⁶ This section, including tables, is largely from Kosaki, pp. 128-132.

less than four months prior to the special election, 67.8 percent of the respondents indicated that they planned to vote in the delegate election.

The convention size was fixed at 102, double the membership of the state house of representatives. In the 1978 special election, at least two convention seats were allocated to each house district; four or six were allotted to the larger districts. A total of 697 candidates filed for the 102 delegate seats. The smallest number of candidates in any district was 6. One district had a high of 30 candidates; and seven districts had more than 20 candidates for the two seats. With each district averaging over 3,000 registered voters, the highest vote getter in the 1978 election obtained 1,982 votes, or 76.7 percent of those voting in the district. The delegate elected with the fewest votes had 363, receiving 19.8 percent of the votes in the district. In view of the large number of candidates in each district, it is not surprising that the great majority (89) of the elected delegates received less than 50 percent of the votes cast in their district.

The composition of the 1978 convention is extremely interesting, especially in comparison with the 1950 and 1968 conventions. Unlike the earlier conventions, the 1978 convention did not contain many familiar faces. Only two incumbent legislators chose to run and were elected to the convention. In addition, two ex-legislators became delegates. Thus, incumbent and ex-legislators constituted only 4 percent of all delegates in 1978, as against 51 percent of the 1968 convention. Six delegates had seen service in the 1968 constitutional convention, and one delegate had served in the 1950 convention.

The delegates were, on the average, younger than their predecessors. The median age in 1968 was 42, while it was 35 in 1978. The respective age distributions of the 1968 and 1978 conventions were as follows:

Age Group	1968 Delegates		1978 Delegates	
	No.	Percent	No.	Percent
50+	18	22.0%	24	23.5%
31-50	55	67.1%	45	44.1%
20-30	7	8.5%	33	32.4%
Unknown	2	2.4%	0	
Total	82		102	

Another change in delegate composition was the significantly larger number of women delegates elected in 1978:

1950	5 of 63 delegates	(7.9%)
1968	8 of 82 delegates	(9.8%)
1978	20 of 102 delegates	(29.4%)

In his book about Hawaii's first two conventions, Norman Meller offers a classification of delegates by occupation. Kosaki updated Meller's analysis with the following results:

Occupation	1950		1968		1978	
	No.	%	No.	%	No.	%
Lawyers	19	30	25	30	20	19.6
Business	25	40	35	43	26	25.5
Educators	7	11	6	7	14	13.7
Doctors, etc.	5	8	2	2	0	
Housewives	3	5	2	2	3	2.9
Union Organizers	2	3	2	2	1	1.0
Full-Time Public Officers	1	2	2	2	1	1.0
Retired	1	2	2	2	6	5.9
Student	0		1		7	6.9
Civil Service Employees	0		5	6	13	12.7
Unemployed	0		0		6	5.9
Others or Unknown	0		0		5	4.9
Total	63		82		102	

What is noteworthy in the "occupation" table is the decrease in 1978 of lawyers, businessmen, and doctors, and the increase in educators, retirees, students, and civil service employees. Also interesting is the fact that six delegates just before the convention described themselves as "unemployed;" the majority of these worked as legal researchers in the recently adjourned legislature.

Election Sidelights

Interviews provided some insights behind the statistics covered in the preceding section.

A number of explanations were given of the intriguing fact that only two legislators ran for the constitutional convention. (1) There was a wide consensus that the legislature was out to assure that the convention would not succeed. Although unable under the constitution to limit subject matter considered by the convention, the legislature created some serious timing roadblocks. As a result, legislators, did not want to be associated with a convention bound to fail. (2) Specifically, the convention was held from July 5 to September 21. It would be difficult for a legislator to campaign for the early October primary and still perform convention duties. (Supposedly, the timing was so designed to discourage delegates from challenging incumbent legislators in the primary election.) (3) Legislators might have been beaten in the convention election. Some fairly strong local people not ordinarily in politics became candidate for delegate and that, together with possible public resentment against legislators not sticking to their lawmaking business, could have resulted in a legislator losing out both for the convention and in a subsequent legislative reelection bid.

Generally, the constitutional convention election was very much a grassroots election. The vast majority of candidates were making their first bid for public office. With many unknown and inexperienced candidates in the running, relatively small organizational and financial support could make a great difference.

The most active role in delegate elections was played by the Hawaii Government Employees Association (HGEA); other organizations were not particularly active. The basic criterion of HGEA support was opposition to Initiative and Referendum. This opposition grew out of a concern about anti-labor initiatives, as well as possible use of the initiative device for fiscal purposes (such as Proposition 13) or restrictions on social programs (welfare, abortion). HGEA screened all candidates for endorsement. Where the union was not satisfied with declared candidates, its representatives encouraged and helped selected people to file. HGEA gave active support to candidates in a variety of ways: money, use of mailing lists, provision of mailing and other facilities, campaign organization and strategy, etc. HGEA supported and helped elect 60-70 percent of the delegates, including some who ended up in the minority. According to one estimate, 40 of the 102 delegates were "fully controlled" by HGEA. Among those elected were 13 HGEA members.

(By the way, a prevalent way of campaigning in Hawaii is for candidates to stand on freeway overpasses during rush hour and wave placards or banners with their name to attract commuters' attention!)

Organizing Convention

Legislative provisions for the convention specified that the delegate election be held May 20 and the convention begin July 5, 1978. Maximum

stipend per delegate was set at \$1,000 per month, the total not to exceed \$4,000. Delegate pay began the day after the election; thus, the last day of pay would be September 20.

Starting pay the day after election was designed to limit the period during which the convention could be held. With a convention beginning date of July 5, the session was effectively limited to 75 days, including weekends and any time off for hearings or recess. In addition to legislatively set limitations, the lieutenant governor also urged completion of convention work no later than September 21 so that proposed amendments could be printed and put on the November general election ballot. Those interviewed believed that this left completely inadequate time to deal with substantive aspects of constitutional revision.

During the period of May 21 to July 5, elected delegates were just "milling around" and organizing. A number of preliminary meetings of delegates were held to select a temporary chairman, establish initial committees, make convention arrangements, agree on a location for the convention, and the like. No substantive constitutional issues were addressed during this period.

In early June, delegates held their first formal meeting and elected William Paty as interim president. He received the votes of about three-fourths of the delegates. Paty set up the rules committee, credential committee, and other administrative committees. The pre-convention period was also used to prepare the delegates for the issues they would be dealing with during the convention. Groups such as the League of Women Voters, a county organization, savings and loan association, and others ran seminars and briefings for delegates.

When the convention met in its first regular session, Paty was elected permanent convention president. He then proceeded to appoint committee members and chairmen. Delegates also elected a secretary and an assistant secretary.

Vice-presidents were elected by delegate caucuses from each of Hawaii's seven senate districts. These vice-presidents were supposed to represent their district in administrative affairs. However, since several of the seven vice-presidents were members of the "minority", their role in the convention became minimal.

Committee structure was essentially similar to that of the 1968 convention. New committees were established to deal with ethics and Hawaiian affairs, while the subject of environment was added to the title of the committee dealing with agriculture, conservation, and land. In all, there were sixteen committees, and each delegate was assigned to serve on five or six of them.

An advisory/steering group functioned during the initial stages of the convention. It consisted of about ten people who had put together the ruling coalition and managed to get Paty elected president. The group participated in various early decisions, particularly appointment of committee members and chairmen. Once the convention was organized, Paty let committees function on their own. As a result, the initial steering group fell apart.

About half-way through the convention, it became apparent that problems were developing because no one kept tabs on the whole convention. John Waihee, a young Native Hawaiian delegate established an unofficial organization and process to coordinate convention activities and assure that basic components of their program were reflected in convention products.

Although convention work started slowly, delegates worked until one or two a.m. during the last several weeks. The crush was so great at the end that apparently it was hard to see the totality of what was happening in the convention and to relate all amendments. In view of the time crunch they experienced, one of the new constitutional amendments adopted by the delegates provides for more adequate time for future conventions to do their work.

How the Convention Came to Be Organized

There was one basic issue around which the convention organized -- Initiative and Referendum. This issue ran so deep, it was so basic, that it caused a major split among the delegates and prevented the convention from ever coming together as a single, unified body.

Initiative and Referendum became the key issue because of the times during which constitutional revision was being considered: society in turmoil, people's concerns focused on immediate problems, most groups pursuing single-interest causes and solutions. The public was frustrated, disenchanted with government, and distrustful of institutions and leaders. In this situation, Initiative and Referendum appeared to many a simple solution -- if people could only vote on the matters of concern to them, direct democracy might solve all problems. (Actually, however, polls showed that popular sentiment was not particularly concerned with Initiative and Referendum. People were worried about crime, high taxes, government expenditures, economic problems, and the like.)

Reform groups such as the League of Women Voters and Common Cause worked in behalf of these devices of direct legislation. Principally,

however, the Initiative and Referendum issue seemed to have been pursued by the media. Much of the cause behind that was frustration with the legislature, which seemed highly unresponsive. The constitution was seen as providing an easier vehicle than the legislative process for resolving social, economic and political frustrations. While some viewed Initiative and Referendum as a basic plank in a reform platform, others saw it as a potential danger to the established order, to their special interests, and to Hawaiian lifestyles. Thus, the convention's organizing thrust grew out of this opposition to Initiative and Referendum.

Rallying around opposition to Initiative and Referendum, one of the convention's two state legislators (Sen. Donald Ching) and the Hawaii Government Employees Association (led by HGEA president David Trask) structured a coalition to assure that Hawaii's constitution would not be amended to permit direct legislation. The coalition was an amalgam of union people and those supported by labor, individuals with ties to larger business interests (though there were not many of these), and a group of younger delegates, mostly Native and graduates of the University of Hawaii Law School, a number of them also legislative staffers.

Architects of the coalition chose William Paty to become convention president. A sugar plantation manager and a republican, Paty had stature and commanded respect. His public prestige helped overcome HGEA's negative media image.

Out of the convention total of 102 delegates, the coalition had 56 solid votes on Initiative and Referendum and organization-related issues. Generally, the "majority" was composed of people who could work and talk together,

essentially a grouping of some 65 votes. It consisted of a dependable core of 40 votes, with another 25 who would come and go depending on issues. In addition, about 15 "reformists" might join with the majority on specific matters.

The "minority" did not function in a consistent or organized manner. Composed of most of the convention's Caucasians, most of the Republicans, and most of the more lucid attorneys, this group consisted mostly of convention independents and individuals brought together mainly by their opposition to the coalition and its hard organizational tactics.

In many ways, the coalition was a loose amalgam of votes that had to be kept together through compromise and promises. One reason for the many changes made in the constitution and for the extensive amount of legislative matter included was the need to satisfy the individual needs and desires of individual delegates whose votes had to be kept in line on core issues such as Initiative and Referendum.

Philosophical Differences, Characteristics of Delegates

Many observations make it clear that there was a lot of dynamics within the Hawaii convention. There were, of course, 102 individuals, and categorizing them is not particularly easy. The groupings that seemed most appropriately classify the delegates were:

- (1) "Reformists" or "independents" -- those who were concerned about government structures and processes and generally favored Initiative and Referendum.

(2) "Standpatists" -- those who wanted none or only the most minimal changes; there were few of these.

(3) "Conservatives" -- those who fell between the other two categories; they often felt more strongly about constitutional preservation than the standpatists, while at other times they favored changes.

It appears that a substantial majority of delegates thought the constitution was basically good and required no major changes. From that standpoint, virtually all could have been classified as "conservatives." However, post-election coalition-building, pursuit of particular objectives, and individual philosophies lead to groupings, some rather loose, that continued through the convention.

While there was a general feeling within the convention that the legislature needed to be made more responsive and that political processes had to be more open, it was the "reformists" or "independents" who believed most strongly that the public majority should be able to exercise power over government and directly participate in political decisions. These individuals generally held that the "aloha spirit" should be kept alive, that migration should not be restricted or growth unduly controlled, and that special privileges should not be granted to Native Hawaiians or any other groups.

As the others, "conservatives" saw Initiative and Referendum as a symbol. With labor, they believed it could become a tool that could be used by ever increasing numbers of in-migrants, mostly haoles (Caucasians) from California, to upset existing order and arrangements. This applied

not only to the fear of the initiative's use against unions, but also to concern that the initiative could work against minorities, be used to establish the death penalty, bring about cuts in social welfare, and the like. They were concerned about accountability for what goes on: To them, it was the unseeable and unseen electorate vs. responsibility fixed directly on the governor and legislature. Behind the opposition also seemed to lie the fear that while the legislature could be influenced, the initiative process could not be controlled. The public was viewed as too often signing petitions and voting without full understanding of propositions and their implications. Thus, danger was seen in the exercise of direct legislative power by an uncaring majority, particularly as such power might be exercised in the areas of labor, welfare, and fiscal legislation.

An important ingredient in the "conservatives'" philosophy was the belief that locals should retain political power and preserve Hawaii's uniqueness in the face of an infusion of newcomers to the state. Accordingly, they sought to preserve existing political and labor power centers, above all defeating proposals to authorize Initiative, Referendum, and Recall. In general, though conservative in many ways, the majority coalition showed itself extremely change oriented in such areas as Hawaiian affairs and environmental issues.

A key role in fashioning the convention's program was played by John Waihee III, a 32-year old attorney. A newspaper article described Waihee, a Native Hawaiian, as the "major architect of the convention's will... who, by default and tactical skill, assumed the role of majority leader midway in the convention." Everyone interviewed supported the premise that insofar as anyone "managed" the convention, both in substance and process, it was Waihee.

Working with Waihee was a group of young people, the "children of the 60's." Their principal goals included social justice, Hawaiian rights, and protection of Hawaii's character and uniqueness. (When one looks at these values, it is clear that the term "conservatives" can be applied to this group only in its most dynamic interpretation.)

Despite many differences there were of course unifying issues that brought delegates together regardless of coalition status. This was true in particular with the full gamut of fiscal controls. The convention's actions in this area demonstrated not only wide consensus among delegates, but also showed that HGEA's power was nowhere near as great as generally perceived. In the fiscal arena, at least, business interests and populism combined to greatly restrict government's taxing and spending ability.

The general philosophy of the convention, or at least of those who set its tone, is best reflected in the revision of the constitution's preamble:

We, the people of [the State of] Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage [,] and uniqueness as an island State, dedicate our efforts to fulfill the philosophy decreed by the Hawaii State motto, "Ua mau ke ea o ka aina i ka pono."*

We reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire.

Principal Constitutional Changes

By the time the delegates concluded their work, they surprised the state and probably themselves by both the number and range of constitutional changes proposed. Part of the explanation lies in the organization of the

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(New material underlined, deleted material in brackets.)

convention. The majority had not been fashioned to implement a program, but rather to oppose amendments which threatened to disturb the status quo: attempts to eliminate or modify public sector collective bargaining, converting of the legislature to a unicameral body, and the introduction of the initiative, referendum, and recall at the state level. The cost of maintaining such a coalition was the inability to prevent individual members, frequently allied with special interests, from successfully championing their pet ideas.⁷

In all, the 1978 convention made 116 changes in Hawaii's constitution. Although some revisions were truly constitutional in nature, the majority would ordinarily be classified as legislative matter. The latter category resulted principally from wide public frustration with governmental, and particularly legislative, processes and actions.

At the same time, the convention's products clearly expressed major current societal values: political reform, fiscal conservatism, environmental concerns, individual rights, and social justice. In addition, delegates also effected a number of structural changes. The appendix reviews changes made by the convention. The following is a summary of principal provisions, loosely grouped according to their basic aim or character.

Political reform

- Code of Ethics: calls for highest standards of ethical conduct and personal integrity of each individual in government; requires adoption of code of ethics by state, each political subdivision, and any constitutional convention; requires administration of each code by an independent

⁷ Norman Meller and Richard H. Kosaki, "Hawaii's Constitutional Convention," to be published in National Civic Review, May 1980.

ethics commission; and specifies that each code shall include provisions on gifts, confidential information, use of positions, contracts with government agencies, financial disclosure, lobbyists, lobbyist registration and restrictions etc.

- Open primary elections are provided in lieu of previous closed party primaries.
- An elected official must resign from office before running for another office.
- Partial public financing of state and local election campaigns is provided.
- Campaign spending limits are to be established.
- Campaign contributions are to be limited.
- Primary required to be at least 45 days prior to general election.
- Legislative procedures: committee meetings held for the purpose of making decisions must be open to the public; a time limit for introduction of bills is provided for; legislature is required to recess for at least 5 days, between the 20th day and 40th day of a session, and the recess must follow bill introduction deadline; bills must be printed and available for 48 hours (rather than 24) prior to third reading.
- Governor and lieutenant governor limited to no more than two consecutive full terms.
- Elected state board of education and university board of regents given jurisdiction over internal organization and management of their respective systems.
- All government writing meant for the public is to be plainly worded.

Fiscal reform

- General fund expenditure growth not to exceed estimated rate of growth of the economy.
- Tax refund or credit to be provided when state general fund has 5 percent surplus for two straight years.
- If state mandates new programs for counties, state must share in costs.
- Deficit spending prohibited, unless governor says public health, safety, welfare are threatened.
- Limits established on amount of principal and interest on state debt.
- Term of general obligation bonds reduced.
- Bond authorizations lapsed if not used in three years.
- Legislature permitted to issue revenue bonds by two 2/3 vote.
- Council on revenues established to prepare revenue estimates that are to be considered by governor in preparing budget and the legislature in appropriating funds.
- Tax review commission to be appointed every five years to evaluate state tax structure and recommend revenue and tax policy.

Growth policy, environmental quality, resources management

- Population growth management: state required to plan and manage population growth; counties also must manage growth, but may be more restrictive than the state.
- State is empowered to promote and maintain a healthful environment, including prevention of excessive demands on environment and resources.
- Environmental rights: each person is granted the right to a clean and healthful environment and is given the right to sue to enforce this right.

- The state and counties are required to conserve and protect Hawaii's natural beauty and resources, and to promote development and utilization of resources to further the state's self-sufficiency. A new provision is added that all public natural resources are held in trust by the state for the benefit of the people; deleted is previous requirement to promote conservation, development, and utilization of agricultural, fisheries, mineral, forest, water, land, and other natural resources.
- Land banking: the state is authorized to acquire interests in real property to control future growth, development, and land use.
- Strong language is included to conserve and protect agricultural lands, and important agricultural may not be reclassified for other purposes except under special circumstances and by extraordinary vote.
- Marine, seabed, and other resources within the boundaries of the state are to be managed and controlled by the state, which reserves to itself outside state boundaries all such rights not specifically limited by federal or international law.
- The state's obligation to protect, control, and regulate use of water resources for the benefit of its people is established, and toward that end a water resource agency is provided for.
- Nuclear fission power plants may not be constructed and radioactive materials may not be disposed of in the state without prior approval by 2/3 vote in each house of the legislature.

Individual rights and social justice

- Right to privacy is added to Bill of Rights.

- Independent counsel will be appointed to advise members of grand juries.
- Discrimination in public school on the basis of sex is prohibited.
- Safety of the people from crimes against persons and property shall be provided by the state.
- Cultural, creative and traditional arts of Hawaii's ethnic groups are to be preserved.
- Power to provide for security and economic and social wellbeing of the elderly is granted this state.
- Public assistance provisions are clarified and specific authority granted to establish eligibility standards.
- All words in the constitution that referred to one sex were replaced with language that is sex-neutral.
- (Abortion, or right-to-life, was never a convention issue.)

Hawaiian rights

Assertion of Native rights was the "real sleeper," the "big event" of the convention. Few elected delegates, and even fewer people outside the convention, had expected Hawaiian rights to become a major topic or to result in a comprehensive "Hawaiian affairs package."

Key to the package were Frenchy DeSoto, who chaired the Hawaiian Affairs Committee, and John Waihee, the convention's "majority leader." Although only 4 of the 12 committee members were Native Hawaiian, Frenchy saw to it that every proposal emerged from the committee with unanimous support. She and her staff proselyted the other delegates to guarantee approval of the entire package.

Hawaiian rights turned out to be an issue that cut across all lines and groups. Young delegates felt it was time to redress the wrongs done to ethnic Hawaiians. People who grew up in Hawaii as well as newcomers had a way to show their support of the basic Hawaii culture. Some non-Hawaiians found it to be a means of dealing with their identity crisis. "Reformists" who wanted to show their liberalism could do so by supporting minority rights. The time became one of "Hawaiian renaissance," providing an opportunity to be Hawaiiphile. And underlying the broad support for the Hawaiian affairs package was Frenchy's dynamic personality, her proselyting activities, and her strategy: "I never let them get away with not feeling guilty." So delegates gave their support despite some serious concern that some propositions were so vague as to create implementation problems and about creating a constitutionally established split along ethnic lines in the state that prides itself on its multi-ethnic base.

Key elements of the Hawaiian affairs package were:

- Subsistence, cultural, and religious rights of Native Hawaiians are recognized and are to be protected by the state.
- Study of Hawaiian culture, history, and language in the schools will be promoted by the state.
- Hawaiian, together with English, is made an official language of the state.
- A portion of the public lands granted Hawaii by the statehood admission act is to be held in trust for the benefit of Hawaiians.
- An office of Hawaiian affairs is established within the executive branch; policy will be made by a board of trustees composed of Hawaiians and elected from throughout the state by Hawaiians only.

- Major state funding is to be provided for economic, social, and other "rehabilitation" purposes for Native Hawaiians.
- Water on lands held for the benefit of Native Hawaiians is excluded from any outside state or other control.
- Acquisition of real property by adverse possession is restricted.

Structural Changes

- Major revisions were made only in the judiciary article: an intermediate appellate court is created; district courts are recognized in the constitution; merit selection of judges is provided; a judicial discipline commission is provided for; compensation for the judiciary is to be set by a salary commission, rather than having it provided in the constitution; courts must establish time limits for disposition of cases; twelve-member juries are provided in cases of serious crime; civil cases can have jury trials for amounts above \$1,000, in lieu of previous \$100.
- Legislative changes include provision for senators to have staggered 4-year terms; previously all were elected at the same time. Reapportionment procedures are somewhat modified, and new reapportionment standards are enacted... Revision of the legislative structure to unicameral system was not seriously considered by the Hawaii convention.

Ratification⁸

When Hawaii's 1978 convention completed its work, it had agreed upon 116 proposed changes. The convention had revised much of the

⁸ Meller and Kosaki.

constitution but apparently did not want to place its handiwork before the voters on an all-or-nothing basis and run the risk of objections to particular amendments causing rejection of the whole. Instead, the precedent set by the 1968 convention was used and all changes were grouped into 34 separate proposals, with the contents of some only tenuously related.

The convention went to great efforts to provide extensive public information on the proposed amendments. Summaries were mailed to all registered voters. An advertising supplement with the text of amendments was distributed through the newspapers in all counties. A voter information booklet provided by the convention was circulated as part of the official ballot. News stories, editorial comment, and pro-and-con analyses prepared and publicized under non-convention auspices also supplied pertinent data and opinions on which voters could make individual judgments.

The Honolulu daily papers opposed only a few amendments -- the morning newspaper three and the evening paper five, with the "right to privacy" amendment the only common target of opposition. On the eve of the election, both papers expressed concern about the possibility that all 34 proposals might be defeated.

The format of the ballot followed the three-part style adopted by the 1968 constitutional convention, providing "yes," "no," and "yes-but" options. Voters were instructed to (1) vote for or against all of the amendments by a single punch of the ballot or (2) avail themselves of the "yes-but" option. The last permitted them to vote against one or more of the proposals which they specifically disapproved; a "yes" was then automatically tallied for the remaining unmarked proposals.

Despite the wide range of subjects, many of them controversial, every one of the convention's proposals received a recorded vote large enough to be declared adopted. Less than sixty percent of the voters who went to the general election poll's marked constitution ballots. Of those who did, one-fifth were in favor of the entire slate of proposals, and almost as many cast a single "no" vote. Some 60 percent voted against one or more amendments. However, the negative votes were so sparsely spread among many proposals that no single amendment was opposed on half of the ratification ballots. The proposals which received the largest negative tallies included the "Hawaiian-affairs package" (Department of Hawaiian Homes Lands amendments, Office of Hawaiian Affairs, and recognition of traditional subsistence and other rights), the right to privacy, resignation of incumbents to run for another office, the provision for campaign financing, and transfer of property tax administration to counties.

Not everyone liked the ballot form or the ratification outcome. Some argued that what had started out in 1968 as an ingenious means to overcome voter inertia had turned into a "cynical manipulation of Hawaii's citizens." Protestors lodged several court challenges but succeeded only in nullifying some minor parts of the proposed changes. In response to the major objection that the form of the ballot was biased in favor of an affirmative vote, the Hawaii supreme court refused to invalidate the results, holding that it was legally sufficient so long as the voters were fully and adequately instructed. Similarly rejected as not invalidating the election was inclusion of unrelated amendments within a single proposal. The complaint that the electorate was presented with too complex an array of amendments to permit an intelligent decision was not considered sufficient to warrant judicial interference with the electoral process.

Miscellaneous Comments

Rules.

1978 convention rules were essentially those of the 1968 convention, where wide consensus prevailed. They did not prove appropriate for a divided convention. They were particularly deficient in being able to move processes along effectively... A resolution enacted by delegates at the end of the convention made suggestions for rule changes that could improve functioning the next convention.

Lobbying.

The convention saw essentially the same lobbyists and special interest that generally work the legislature. Some lobbyists were there all of the time, while others resonded to specific issues. Principal lobbies were labor, estates, sugar planters. Many interests were represented by delegates themselves, especially business... Lobbyists had to work hard, apply heavy pressure. The convention was essentially wide open, and all 102 delegates were important, not just committee chairmen as in the legislature... Leaders of the executive and legislative branches proclaimed a hands-off policy, though it is claimed that they did not favor adoption of major substantive changes. Amendment creating an intermediate court of appeals was actively sought by the judiciary, led by the chief justice.

Outside Activities.

Most delegates gave total attention and commitment to the convention. In early stages, some individuals would spend off-hours (early mornings, evenings, weekends) on law practices or outside activities. Later in the convention, there was no time for outside pursuits... A large number of delegates were young, many were not really established and some were

unemployed. Accordingly, most had no problem concentrating full-time on the convention.

Legislative Follow-Up.

Despite a strong undercurrent of anti-legislature sentiment, most amendments were non-self-executing and required legislative implementation. Not being sympathetic to the convention in the first place, implementation has been slow and sporadic... The legislature is choosing what will go, what will not be put into effect... Legislative follow-up on the Hawaiian Affairs package was described as "Terrible! They are messing it up, not implementing the constitutional provisions." Unsympathetic legislators claim that constitutional language is not sufficiently explicit, the intent not clear. Some expect the legislature to do nothing.

Controlled Convention.

Delegates who were not part of the convention's governing coalition found it impossible to have any significant substantive or procedural impact... The coalition was formed early and some delegates who would have been sympathetic to the majority's objectives were never asked to join. They thus became part of the minority, even though they might have been willing to join the coalition, support William Paty for president, and otherwise participate in convention decisions.

Hawaiians' Conclusions and Suggestions

The following were among the concluding sentiments expressed by persons interviewed during preparation of this paper:

A constitution does require periodic monitoring, fine-tuning. There is need to provide for social reforms that the legislature won't put into effect.

A convention is worth having -- if not controlled by political machinery. It's not worthwhile just for minor reforms to placate public opinion, just to provide window dressing.

Preferably should not have a constitutional convention unless it is really necessary, not without a definite purpose... A constitutional revision commission could provide a good alternative approach.

ConCon was positive for the state, despite some bad amendments. There were good amendments on finance and taxation. And while we cannot mandate fiscal responsibility, at least this will keep government from running away with expenditures and taxes.

Set up procedure to accomplish initial organization: temporary chairmen, non-controversial arrangement, convention finances, a place to meet, furniture, etc. In '78, there was too much confusion, much time was lost jockeying around... Get someone outside convention to act as temporary chairman and preside over initial organizational state. This would avoid the premature worrying about selection of temporary chairman who would most likely become the permanent president. Alternatively, pick someone as temporary president with clear understanding that this person would not be the permanent president, but would simply supervise initial stage while permanent president is chosen.

A convention should develop a philosophy, a vision of the future, create a unifying force. But can't accomplish or develop a real program before a convention begins. Delegates have to get to know each other in convention... If you have a convention, phase it, hold it in two parts. Use the first phase to develop the foundation, establish a philosophy, develop a preliminary program and product. Then take time out to think it over, talk with the people, just get away from it for a while. After nine months or so, come together and develop the final product.

Biggest value of convention was providing the opportunity to inject a lot of fresh blood into the political process. That includes not just the 102 delegates who were elected, but the total of over 600 people who were candidates in the convention election.

APPENDIX -- Hawaii's 1978 Constitutional Amendments

PREAMBLE

New language added to the preamble reflects the temper of Hawaii's 1968 convention:

We reserve the right to control our destiny,
to nurture the integrity of our people and
culture, and to preserve the quality of life
that we desire.

Other language emphasizes Hawaii's "uniqueness as an island State" and expands the ordainment clause to state that the constitution is established "with an understanding and compassionate heart toward all the peoples of the earth." (New material underlined.)

ARTICLE I. BILL OF RIGHTS

Right to Privacy

Section 6. The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

Alaska adopted a similar amendment in 1972.

Grand Jury Counsel

Provides for the appointment of independent counsel to advise members of a grand jury. Counsel must be a lawyer and not a public employee.

Trial by Jury, Civil Cases

Amount in controversy necessary for a jury trial in a civil suit is raised from \$100 to \$1,000.

Rights of Accused

A jury must consist of twelve members when "the crime charged is serious". Provision also requires counsel for indigent defendants whenever charged with an offense punishable by imprisonment; previously applicable to possible imprisonment of more than 60 days.

ARTICLE II. SUFFRAGE AND ELECTIONS

Registration; Voting

An open primary is established by specifying that a person need not declare party preference or non-partisanship as a condition for voting

in a primary election. The provision is reinforced by requiring that secrecy of political party affiliation or nonpartisanship is to be preserved.

Campaign Fund, Spending Limit, Contributions Limit

The legislature is required to establish a campaign fund to be used for partial public funding of campaigns for state and local public offices.

The legislature is also required to provide a limit on the campaign spending of candidates.

Limitations on campaign contributions to any political candidate or authorized political campaign organization for such candidate are to be established by the legislature.

(No money amounts are specified in any of the amendments.)

Resignation from Public Office

An elected official is required to resign the office to which elected in order to be eligible as a candidate for another public office if the term of the new office begins before the other ends.

Timing of Elections

Primary and special elections must precede general elections by no less than 45 days.

ARTICLE III. THE LEGISLATURE

Salary Commission

A commission is established to develop a salary plan for members of the legislature. Plan goes into effect unless disapproved by the legislature or by the governor. A new salary plan is developed every eight years.

(By all accounts, the 1979 experience under this plan was a fiasco.)

Sessions

Each regular session must be recessed for not less than 5 days at some period between the 20th and 40th day of the session. The purpose of the amendment is to provide both legislators and the public an opportunity to review bills introduced prior to the recess and to give an opportunity for legislators and constituents to communicate on matters before the legislature at about the mid-point of a regular session. (Hawaii has had a practice of imposing a bill introduction deadline at or about the 20th session day.)

Open Meetings; Bill Introduction Deadline

All legislative committee meetings must be open to the public. Each house is required to establish a date at which all bills to be considered in a regular session must be introduced. This date must be prior to the above mandatory recess time.

Passage of Bills

Increases from 24 hours to 48 hours, the amount of time a printed bill must be available to legislators before passage on third or final reading.

ARTICLE IV. REAPPORTIONMENT

Reapportionment provisions are taken out of the legislature article and are revised and expanded. Following changes are made:

- staggered terms are established for members of the senate, abolishing the old system whereby all senators ran concurrently for 4-year terms.
- reapportionment is required every 10 years beginning with 1981, eliminating the previous 8-year reapportionment provision.
- the reapportionment commission has 150 days, rather than the previous 120, to complete a reapportionment plan. (Alaska's reapportionment board must submit a plan within 90 days following official reporting of each decennial census.)
- criteria are established for apportionment among and within "basic island units."
- provides for placement of holdover senators.
- reapportionment commission is given responsibility for redrawing congressional district lines for election of U.S. House of Representatives members.

ARTICLE V. THE EXECUTIVE

Limit on Tenure

Both the governor and lieutenant governor are limited to no more than two consecutive full terms of office.

Grouping of Executive Agencies

Executive and administrative units are to be grouped within 20 departments according to common purposes and related functions, rather than according to "major purposes so far as practicable" as before.

(The purpose of the amendment supposedly was to provide constitutional impetus for a functional approach in achieving an effective departmental structure. This was done in response to dissatisfaction with the existing organizational arrangements.)

ARTICLE VI. THE JUDICIARY

Courts

New provisions establish an intermediate appellate court and give constitutional recognition to district courts. These are in addition to previous constitutional provisions for a supreme court and circuit courts.

Selection and Appointment of Justices and Judges

A modified merit selection process is established under a series of amendments.

A nine-member judicial selection commission is established. The governor appoints three members, of whom not more than one can be an attorney. The president of the senate and speaker of the house each appoint a member of the commission. The chief justice of the supreme court appoints two members, of whom only one may be a licensed attorney. Members of the state bar elect two members. In all, not more than four members of the commission may be licensed attorneys.

Vacancies in the office of the chief justice, supreme court, intermediate appellate court, and circuit courts are filled by the governor appointing a person from a list of not less than six nominees for the vacancy presented to the governor by the judicial selection committee. The appointment is subject to approval by the state senate. Appointees must be licensed attorneys.

Justices and judges of the supreme court, intermediate appellate court, and circuit courts serve terms of 10 years. Upon the expiration of that term, the judicial selection commission may determine to retain a justice or judge in office, renewing the term for 10 years or for another period established by law.

A salary commission is created to review and recommend salaries for justices and judges, with their salaries set by the legislature.

Discipline

Provisions for removal or retirement of justices and judges by the governor upon certification by a pertinent commission are eliminated. In lieu, the supreme court is given power to reprimand, discipline, suspend with or without salary, retire, or remove any justice or judge for misconduct or disability. The supreme court is required to establish a commission on judicial discipline with authority to investigate allegations of misconduct or disability and to make recommendations to the supreme court for appropriate action.