

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

802 SCOM,27: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

ARTICLE VII. TAXATION AND FINANCE

Tax Conformance

The legislature is granted authority to conform state tax laws to federal tax laws, although the state rates are set and modifications can be made by the legislature.

(The amendment was apparently deemed necessary by an attorney general's opinion which stated that the constitution prevented automatic conformance to federal tax provisions.)

Tax Review Commission

Appointment of a tax review commission is required in 1980 and every 5 years thereafter. The commission must submit to the legislature an evaluation of the state's tax structure, recommend revenue and tax policy, and then dissolve.

(The committee report states that the amendment is deemed necessary since neither the executive nor legislative branch has over a period of two decades reviewed the state's overall tax system against such standards as equity and efficiency. It is further suggested that a periodic and independent assessment would be useful to both branches and would help provide the public with a framework by which it can assess executive and legislative actions on taxation and revenue policy.)

Appropriations for Private Purposes Prohibited

Hawaii's constitution has since 1950 provided that no tax be levied, nor the public credit be used, directly or indirectly, except for a public purpose; the same requirement applies to any grants made by the state. In 1978, new language was added stating: No grant of public money or property shall be made except pursuant to standards provided by law.

(The committee report notes that the addition of the language will require the legislature to establish standards for appropriation of funds to private organizations conducting programs which the legislature has determined to be in the public interest. No such standards have existed, even though the legislature appropriates several millions each biennium to private organizations.)

Expenditure Controls

Expenditures of public money may be made only pursuant to appropriations made by law.

General fund expenditures for any fiscal year may not exceed the state's current general fund revenues and unencumbered cash balances,

appropriations lapse at the close of the fiscal period for which the appropriation is made.

Revenue Bonds

The legislature is authorized to issue special purpose revenue bonds. 2/3 vote of the legislature are required: one to authorize bonds, and another to issue the bonds. Special purposes include assistance to manufacturing, processing, industrial enterprises, utilities serving general public, health care facilities, and low and moderate income government housing programs. State credit cannot be used directly or indirectly to secure special purpose revenue bonds. Legislature may authorize counties to also issue special purpose revenue bonds.

Debt Limitation; Exclusions

The debt limit is revised to limit amount of principal and interest payments on general obligation bonds to 20 percent of the average general fund revenues over the three preceding fiscal years; after 1982, the percentage limit is reduced to 18 1/2%. The legislature is required to certify that any bond issuance does not bring total state indebtedness above such a limit. The general obligation bond limit is reduced to 25 years from 35 years. The list of exclusions from computation of total indebtedness is extended to cover special purpose revenue bonds, certain loans guaranteed by the state, tax anticipation bonds, and emergency bonds.

ARTICLE VIII. LOCAL GOVERNMENT

Real Property Taxation

Power to tax real property is transferred from the state to the counties. For eleven years, assessing methods are to be uniform throughout the state.

(Reasons for giving counties the power to tax real property included: the change is consistent with home rule; counties are responsible for local affairs and should have authority over local real property taxation; real property tax policies are more of local than of statewide concern.)

State-Mandated Programs

The state must share in the cost of any new or expanded services mandated by the legislature to a political subdivision.

(The intent was to assure that the state did not circumvent the spending limit by transferring some of its functions to counties without compensating them for increased costs.)

except when the governor publicly declares that the public health, safety, and welfare is threatened.

(The latter provision prohibits deficit spending. It is designed to prevent circumvention of the newly established spending limit by engaging in deficit spending.)

Disposition of Excess Revenues

Provision is made for taxpayers to benefit from any surplus in the state's general fund balance. Whenever this balance in each of two successive fiscal years exceeds 5 percent of general fund revenues for each of those years, taxpayers are to be given a tax refund or tax credit. Means of the rebate are to be provided by the legislature.

Council on Revenues

A council on revenues is to be established by law to prepare revenue estimates for the state government and to report the estimates to the governor and the legislature. The governor is to consider the estimates in preparing the budget, recommending appropriations and revenues, and controlling expenditures. The legislature is to consider the estimates in appropriating funds and enacting revenue measures.

Budget

The governor is required to submit a complete plan of proposed expenditures of the executive branch, together with estimates of the aggregate expenditures of the judicial and legislative branches. The chief justice is required to submit to the legislature a complete plan of proposed expenditures of the judicial branch.

Total proposed general fund expenditures may not exceed the general fund expenditure ceiling established by the legislature, unless the governor sets forth the excess and the reasons therefor.

Expenditure Ceiling

A general fund expenditure ceiling is to be established by the legislature to limit the rate of growth of general fund appropriations to the estimated rate of growth of the state's economy. No appropriation in excess of the ceiling may be authorized during any legislative session unless authorized by 2/3 vote of the membership of each house.

Auditor

Authority of the legislative officer to conduct post-audits of programs and performances, as well as financial transactions and accounts, of executive agencies and political subdivisions is clarified.

Lapsing of Appropriations

Appropriations from general funds or general obligation bond funds must be for specified periods not exceeding three years. Unencumbered

ARTICLE IX. PUBLIC HEALTH AND WELFARE

Care of Handicapped

Provides state with broad power to provide for the treatment and rehabilitation of handicapped persons, broadening and clarifying previous provisions.

Public Assistance

The legislature is given the power to establish eligibility standards for public assistance, which covers financial aid, medical assistance, and social services.

Economic Security of the Elderly

The state is given power to provide for the security of the elderly by establishing and promoting programs to assure their economic and social wellbeing.

Management of State Population Growth

State and local governments are required to plan and manage growth:

The State and its political subdivisions as provided by general law, shall plan and manage the growth of the population to protect and preserve the public health and welfare; except that each political subdivision, as provided by general law, may plan and manage the growth of its population in a more restrictive manner than the State.

(Referring to Hawaiian's concern about rapidly increasing population, the committee report concludes that planning and managing growth should be a top priority in the state's activities.)

Preservation of a Healthful Environment

The State shall have the power to promote and maintain a healthful environment, including the prevention of any excessive demands upon the environment and the State's resources.

Cultural Resources

The State shall have the power to preserve and develop, the cultural, creative and tradition arts of its various ethnic groups.

Public Safety

The law of the splintered paddle, mamala-hoe kanawai, decreed by Kamehameha I - Let every elderly person,

woman and child, lie by the roadside in safety - shall be a unique and living symbol of the State's concern for public safety.

The State shall have the power to provide for the safety of the people from crimes against persons and property.

(According to the committee report, the amendment is intended to address the growing concern of the public about the crime rate. Existing statutes and endorsements were deemed ineffectual in coping with the growing crime rate. Public safety was singled out as an area deserving special and increased recognition.)

ARTICLE X. EDUCATION

Public Education

The prohibition of "segregation" in the schools was replaced with a prohibition against discrimination. Sex was added to prohibitions under discrimination.

Board of Education

Amendments deal with nonpartisan election and districting of Hawaii's elected board of education.

Board is given jurisdiction over the internal organization and management of the public school system, though the legislature and governor would continue to exercise general budgetary control over the system.

Hawaiian Education Program

The State shall promote the study of Hawaiian culture, history and language.

The State shall provide for a Hawaiian education program consisting of language, culture and history in the public schools. The use of community expertise shall be encouraged as a suitable and essential means in furtherance of the Hawaiian education program.

(The committee stated that the study of Hawaiian culture, history, and language should be vigorously promoted and encouraged. Because Hawaii has a special status as the only state which was formerly a kingdom and which has its own Polynesian heritage and customs, the inclusion of the provision in the constitution is intended to facilitate the preservation and growth of the Hawaiian culture.)

(The convention wanted to assure the general diffusion of Hawaiian history in the community to assure that a program be developed as part of the regular public school curriculum employing persons who have knowledge of Hawaiian language, culture, and history, but who do not necessarily have the formal educational qualifications.)

Board of Regents; Powers

The board of regents is given exclusive jurisdiction over the internal organization and management of the University of Hawaii. The amendment also states its intent not to limit the power of the legislature to enact laws of statewide concern.

While constitutional intent was to make authority of the board of regents complete with respect to matters of internal organization and management, the governor would continue to review the university's budget requests before submission to the legislature. Furthermore, the university would continue to comply with laws passed by the legislature... (A post-convention analysis of constitutional amendments by the Legislative Reference Bureau raises a series of questions that remain unresolved even after this supposedly clarifying amendment was enacted.)

ARTICLE XI. CONSERVATION, CONTROL AND DEVELOPMENT OF RESOURCES

Conservation and Development of Resources

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

All public natural resources are held in trust by the State for the benefit of the people.

The amendment deletes previous requirements for the state to promote the conservation, development and utilization of agricultural resources and fish, mineral, forests, water, land, game and other natural resources.

The committee report defines the word "conservation" as "the protection, improvement, and use of natural resources according to principles that will assure the highest economic or social benefits." ... The provision regarding "self-sufficiency" was included to recognize the growing concern and awareness of Hawaii as being overly dependent on outside sources for, among other resources, food and energy... The report concludes that the promotion of energy conservation, development of clean, renewable sources of energy, and achievement of increased self-sufficiency would be adequately covered by the provisions of the new section.)

Agricultural Lands

The State shall conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally

suitable lands. The legislature shall provide standards and criteria to accomplish the foregoing.

Lands identified by the State as important agricultural lands needed to fulfill the purposes above shall not be reclassified by the State or rezoned by its political subdivisions without meeting the standards and criteria established by the legislature and approved by a two-thirds vote of the body responsible for the reclassification or rezoning action.

The new language substitutes for a section referring only to development of farm and home ownership.

Public Land Banking

The State shall have the power to acquire interests in real property to control future growth, development and land use within the State. The exercise of such power is deemed to be for a public use and purpose.

(The language is designed to overcome possible constitutional problems in case the legislature chose to establish a land bank program.)

Water Resources

A new section is added obligating the state to protect, control, and regulate water resources for the benefit of the people of Hawaii. The legislature must provide for a water resources agency to set water policies, define beneficial uses, protect ground and surface water, establish criteria for water use priorities, and establish procedures for regulating all uses of Hawaii's water resources.

(The Committee of the Whole report states that the question of water ownership is irrelevant to the states ability to exercise its police power to regulate fresh water resources. It further clarifies that the agency has power to regulate existing as well as future water usage.)

Nuclear Energy and Radioactive Material Disposal

Another new section added to the resource article provides:

No nuclear fission power plant shall be constructed or radioactive material disposed of in the State without the prior approval by a two-thirds vote in each house of the legislature.

Environmental Rights

Hawaii's convention decided to affirm the rights of citizens to a clean and healthful environment, and citizens are given the right to sue to enforce this right:

ARTICLE XII. HAWAIIAN AFFAIRS

An article previously dealing with Hawaiian home lands now covers the Hawaiian affairs package enacted by the 1978 convention. The package is designed to recognize rights of and provide benefits for native Hawaiians.

Hawaiian Homes Commission Act

The Hawaiian Homes Commission Act of 1920 was incorporated in Hawaii's constitution in 1959 as a condition of Hawaii's admission to the Union. Under the act, all available lands be used to provide for settlement by native Hawaiians and to raise revenues for their benefit.

While many Hawaiians benefited over the years, much land was used for non-settlement purposes, including utilization by sugar and pineapple plantations. Monetary returns were not considered sufficient to be of major benefit to native Hawaiians.

1978 amendments to the act established specific purposes for its implementation: (1) development of home, agriculture, farm and ranch lots; (2) home, agriculture, aquaculture, farm and ranch loans; (3) rehabilitation projects to include, but not limited to, educational, economic, political, social and cultural processes by which the general welfare and conditions of native Hawaiians are thereby improved; (4) the administration and operating budget of the department of Hawaiian home lands...

Further, 30 percent of state receipts from lease of sugar lands or from water licenses are to be placed in a newly established native Hawaiian rehabilitation fund, which becomes one of eight constitutionally established special funds. This money is to be used solely for the benefit of native Hawaiians, as described in item (3) of the preceding paragraph.

A special provision excludes waters controlled by the Department of Hawaiian Home Lands from any outside control, thus removing them from jurisdiction of the water resources agency established in an earlier amendment.

Office of Hawaiian Affairs

A further series of amendments establishes an Office of Hawaiian Affairs, which would hold title to all property conveyed to it and which would, in turn, be held in trust for native Hawaiians and the general public. A nine-member board of trustees, elected by and consisting of Hawaiians is to manage and administer proceeds from the disposition of lands, natural resources, minerals, and income from whatever source for Hawaiians.

"Hawaiian" is defined as any descendant of the races inhabiting the Hawaiian Islands previous to 1778. "Native Hawaiian" is any descendant of not less than one half part of the blood of races inhabiting the Hawaiian Islands previous to 1778.

Subsistence, Cultural, and Religious Rights

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.

An "ahupua'a" is defined as a land division or unit of land usually extending from the uplands to the sea, varying in size from 100 to 100,000 acres. Traditionally, individual Hawaiians did not own land, and lands provided under the Hawaiian Homes Commission Act are not held in fee. Thus, the rights are considered to be personal rights; rather than being attached to the land, the rights are inherently held by Hawaiians and do not run with the land.

Only native Hawaiians who are tenants of an ahupua'a, and not all native Hawaiians, are given access rights to the mountains and the sea, as was traditionally and customarily asserted by their ancestors. Other protected rights include fishing rights, hunting, gathering, water rights, and other rights for sustenance, cultural, and religious purposes.

ARTICLE XV. STATE BOUNDARIES; CAPITAL; FLAG; LANGUAGE AND MOTTO

Boundaries

In order to eliminate ambiguity and uncertainty with respect to state boundaries as established in the Congressional Admission Act, and to affirm the state's archipelagic status in order to protect and regulate Hawaii's commerce and trade and to conserve and utilize its ocean resources, the boundary definition was revised to read:

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters... (New matter underlined.)

Hawaiian: An Official Language

English and Hawaiian shall be the official languages of Hawaii, except that Hawaiian shall be required for public acts and transactions only as provided by law.

(In adopting the new language, the convention wanted to overcome insults of the past, where the speaking of Hawaiian was forbidden in the public school system, and of the day, where Hawaiian has been listed as a foreign language in the language department of the University of Hawaii. A further stated intent was to give full recognition to the rich and cultural inheritance that Hawaiians have given to all ethnic groups.)

Motto

The state motto is established as "Ua mau ke ea o ka aina i ka pono."

ARTICLE XVI. GENERAL AND MISCELLANEOUS PROVISIONS

Disqualifications from Public Office or Employment

An amendment provides that persons convicted (rather than, as previously stated, merely accused) of an act or conspiracy to overthrow the government by force will be disqualified from holding public office or employment.

Adverse Possession

A new provision was enacted to provide a constitutional vehicle to "protect the lands of the people from theft through adverse possession proceedings." Use of adverse possession is restricted to real property of five acres or less. Such claims may be brought by a person not more than once in twenty years.

(The adverse possession process had apparently been used in the past to obtain title to lands properly belonging to native Hawaiians.)

Plain Language

A principle was established that government writing should be concise, simple, and understandable. This was designed to insure that the people have access to the government's resources and information and that non-technical language be used whenever possible:

Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.

ARTICLE VII. REVISION AND AMENDMENT

Constitutional Convention

One amendment provides that if any nine year, instead of ten year, period elapses during which the question of whether to hold a constitutional convention is not submitted to the electorate, that question is to be voted on at the first general election thereafter. The intent is still that the question be submitted to the electorate every tenth year, but the change eliminates the problem that resulted in 1976 due to strict interpretation of the ten-year provision.

(Alaska could face a similar problem in view of its similar ten year proviso.)

To deal with the problem of insufficient time having been provided by the legislature for the 1978 convention, delegates specified that future constitutional conventions begin not less than five months prior to the next regularly scheduled general election.

(The committee report discusses the wish of delegates for a specified public official to convene delegates and disburse monies or incur expenses prior to formal organization of the convention. However, delegates agreed that the matter should be resolved by the legislature.)

(The legislature is also urged by the report to consider establishment of a constitutional revision commission to provide for continuous study of Hawaii's constitution.)

TECHNICAL AND STYLE CHANGES

A separate amendment was adopted which:

- changes the constitution where the subject was found to be unconstitutional or unnecessary under the Constitution of the United States.
- changes style and language for uniformity and other reasons.
- replaces words which sound like they apply to only men or women with words which apply to everyone (de-sexifying the constitution)
- makes small changes which are related to the main purposes of other amendments.

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

**LEGISLATIVE INTERIM COMMITTEE
ON THE
Constitutional Convention**

CO-CHAIRMEN

**SENATOR GEORGE HOHMAN
&
REPRESENTATIVE BRIAN ROGERS**

1979

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Original

A CONSTITUTIONAL CONVENTION FOR ALASKA

This memorandum has been prepared for Representative Brian Rogers, Fairbanks, for the Alaska State Legislature Interim Committee on a Constitutional Convention. It assumes that there will be a constitutional convention in Alaska within the next decade.

I. BACKGROUND

The present basic framework of our State constitution was ratified by two-thirds of the twenty-five thousand persons voting in April of 1956. The National Municipal League termed it as "one of the best, if not the best, state constitutions ever written." ^{1/} it has been amended 15 times since Statehood. The most significant amendments, in chronological order, have been established the voting age at 18 years (1969), prohibited the chief justice of the Supreme Court from serving two consecutive terms (1970), amended the exclusive right of fisheries provision to provide for Limited Entry (1972), amended the civil rights section to prohibit discrimination on the basis of sex (1972), added the privacy amendment (1972), and added the amendment establishing Alaska Permanent Fund (1976).

Despite the promotion of the constitution as one of the best written in 1956, and notwithstanding changes effected by the fourteen amendments adopted since original ratification, the state constitution as it now stands displays a variety of defects and weaknesses, which will be discussed subsequently in detail.

Many of these defects and weaknesses derive from State and Federal court decisions interpreting the validity or effect of various sections. Other weaknesses have become

^{1/} Editorial, National Municipal Review, April, 1956, p. 156.

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evident due to the evolving standards of our society. 2/
Recently, the State of Hawaii, which adopted the original state constitution in the same decade as Alaska's original constitution, completed their second constitutional convention. That convention proposed individual amendments, most of which were adopted by the voters and most of which amendments reflected evolving standards of public interest that the growth and changes in Hawaii had brought forth.

II. DEFECTS AND WEAKNESSES IN THE ALASKA STATE CONSTITUTION

Undoubtedly a number of single special interests constituencies exist in Alaska today that will push for

2/ One example of political statesmanship can be found since the convention with regard to evolving standards. In 1965, Governor William A. Egan issued a proclamation of reapportionment and redistricting the Alaska State Senate with population as a sole factor. In his statement accompanying his proclamation, Governor Egan said

"Making this proclamation today is not an easy task for me. My personal feelings and my duties and obligations as governor under the Constitution of Alaska do not exactly coincide.

Nearly ten years ago at the Constitutional Convention, I was one of those who worked hard and saw to it that apportionment of the State Senate would take into consideration factors other than just population. We considered, among other things, geography, social economic needs, the relationships of contiguous areas, and the future possibilities of growth.

It was my view, as well as that of a majority of the other delegates, that it was in the public interest to have one house of the legislature apportioned by area than population to serve as a check and balance on the other. This is still my view.

However, this land is ruled by law, not me. The Supreme Court of the United States is our final arbiter of justice.

Our nation's highest court has ruled that each citizen's vote must count as much as another, and I must abide as closely as possible by that decision. In this instance it was with reluctance that I approach my duty. But as your governor I took an oath to uphold both the Constitution of the United States and the Constitution of the State of Alaska.

amendments at any constitutional convention. Anti-abortion groups, single interest law and order groups seeking elected judges, groups seeking to wrench away state land, and groups seeking to oppose or disregard environmental safeguards are examples of single interest groups that will likely surface. Those issues are primarily political and do not indicate any general defect or weakness impacting the public interest.

Broader public issues will also surface. A matter of genuine concern in Alaska today is the breadth and abuse of executive power. The continuing efficacy of a bicameral legislature has generated debate. Tax and spending issues have surfaced. The role of the state as trustee of its resources for the benefit of the citizens continues to be discussed. These issues are certainly political but are not primarily molded by single interest constituencies. They do not represent defects or weaknesses in the constitution but rather the philosophical, social and economic differences within our state.

The defects and weaknesses referred to below reflect matters which were not contemplated, or were beyond the comprehension of the original constitutional framers. This is not to say that they do not have political effects or have not been involved in political controversy. They are the effect of controversies in our society and not the purpose of it. They will be addressed in the order that they appear in the state constitution.

A. ARTICLE 1, § 8, GRAND JURY

This section currently provides in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the armed forces in time of war or public danger. Indictment may be waived by the accused.

In a grand jury proceeding a defendant does not have a right to have an attorney present nor does he have a right to cross-examine any of the witnesses produced by the state. The original concept of constitutional protection for an

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accused by a right to a grand jury indictment contemplated that the grand jury would be an effective shield against potential abuse of prosecutorial power. In practice the use of the grand jury has often been used as a sword in the furtherance of prosecutorial power. Although our state Supreme Court has enumerated a number of protections for the accused during the grand jury process (i.e. hearsay evidence shall not be presented to the grand jury absent compelling justification for its production) a movement has surfaced in Alaska indicating a general dissatisfaction with the grand jury process.

The Alaska Criminal Rules of Procedure provide that if a person is not indicted within 10 days after arraignment when in custody (or 20 days if not in custody) then the accused has a right to what is known as a preliminary examination. Alaska Criminal Rule 5(e)(2). At a preliminary examination the defendant is entitled to be represented by counsel, the normal rules of evidence apply, the defendant has a right to cross-examine the witnesses against him and, if from the evidence, it appears that there is no probable cause to believe that an offense has been committed or to believe that the defendant committed an offense than the judge will dismiss the complaint and discharge the defendant. Many persons and institutions, including the Alaska Judicial Council, believe the preliminary examination to be a superior form of protection than the grand jury.

Some suggestions have been made that all persons arrested for a felony should be automatically be given the right to a preliminary examination. The problem arises that in order to do so either the defendant must waive the right to a grand jury or the state must suffer the burden of presenting evidence at a preliminary examination and subsequently present evidence at a grand jury. ^{1/} It may be

^{1/} This problem is not as acute as it may seem on first glance. In most areas of Alaska an accused does have a preliminary examination, because the grand jury only sits occasionally, and subsequently is indicted. The major problem occurs in the large urban centers, primarily Anchorage, where a grand jury sits all the time.

constitutionally impermissible to force a person to choose between the right to a preliminary examination or a right to the grand jury. Accordingly, the above referenced section, if amended appropriately, would provide a more efficient means for criminal prosecution in the state and at the same time provide more protection for those persons accused of crimes from any potential abuse of prosecutorial power.

B. ARTICLE 1, § 2, RIGHT OF PRIVACY

This section currently provides:

The right of the people to privacy is recognized and shall not be infringed. The Legislature shall implement this section.

To date the Alaska Legislature has done nothing to implement this section. As a result citizens have been forced to seek relief through litigation in the judicial branch of government in order to protect their rights under this amendment.

In 1978, in Erickson v. State, the State Supreme Court diluted the right to privacy. Previously, it was considered that a person had an absolute right to be let alone, absent a compelling state interest to invade that privacy. The court diluted that right by establishing a sliding scale test based upon interests sought to be protected. This test is nearly identical to rights already guaranteed to us under the Due Process clauses of the Alaska and Federal Constitutions. When Hawaii added the privacy amendment to its constitution it also included the language that that right may not be infringed upon absent a compelling state interest. The addition of such language in Alaska's constitution would provide more protection for the average citizen in his private affairs.

C. ARTICLE 2, § 5 DISQUALIFICATIONS

In 1970 voters approved an amendment to the constitution changing the name of secretary of state to lt. governor. That amendment inadvertently admitted amending this section, consequently secretary of state is still referred to in the third sentence.

D. ARTICLE 3, § 25 DEPARTMENTS HEADS

This section presently provides:

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the lt. governor. The heads of all principal departments shall be citizens of the United States.

ARTICLE 3, § 26 BOARDS AND COMMISSIONS

This section provides in relevant part:

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members in the legislature at joint session, and may be removed as provided by law.

Two controversies have arisen with regard to these sections. In Bradner v. Hammond (1976) the Supreme Court concluded that the confirmation power of the legislature didn't extend below the department head level to deputy heads and the directors of the various divisions within the administration. That ruling effectively shelters many persons holding substantial sway over Alaska's society from legislative scrutiny.

The second controversy which has arisen respective to these sections stems from the failure of Governor Hammond to resubmit holdover appointees from his first administration for reconfirmation. No court test of that decision was initiated, and if the practice is allowed to stand, in connection with the ruling in Bradner v. Hammond, a number of nonelected public officials with substantial influence over the lives of Alaskans will be able to evade legislative scrutiny for as long as eight years.

E. ARTICLE 6, LEGISLATIVE APPORTIONMENT

This article is in need of substantial, if not total, revision. On numerous occasions the defects and weaknesses in the reapportionment article have been subject to communication between the Supreme Court and the Legislature.

In the 1976 State of the Judiciary Address, Chief Justice Boochever stated:

One matter that I wish to call again to your attention deals with reapportionment. As you know, our constitution provisions were written before the United States Supreme Court made its historical decisions requiring both houses to be apportioned on the basis of the population. We have no appropriate constitutional procedure for reapportionment of the Senate or for such troublesome questions as whether an existing Senator's four year term should be truncated when reapportionment occurs. On three occasions, the Alaska Supreme Court has had to wrestle with reapportionment problems, and each opinion has urged the legislature to initiate steps to amend the constitution to provide a suitable means of reapportionment of the Senate. The year 1980 will be upon us in all too short a time, and I urge you to see that proper studies are immediately undertaken so that an appropriate constitutional amendment may be proposed. Such an amendment must be placed on the ballot of a statewide election. Unless this legislature is in a position to propose one, it will have to await the 1980 elections. At the very least, I would recommend that you refer this matter to the Legislative Affairs Agency for preparation of an appropriate constitutional amendment. See also, letter from Chief Justice Boochever to Senator Rader and Representative Malone, Senate Journal April 6, 1977.

F. ARTICLE 9, § 7 DEDICATED FUNDS

This section currently states:

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in § 15 of this article or when required by the Federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

In a recent case in Southeast Alaska, a superior court trial judge ruled that any service area in the unorganized borough or other political subdivision of the state is prohibited by this section from levying assessments or taxes and expending monies unless the assessments or taxes are deposited in the state general fund and appropriated back to the entity by the legislature. This ruling, if allowed to stand by the State Supreme Court, strikes a heavy blow against local autonomy.

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G. ARTICLE 10, LOCAL GOVERNMENT

The constitutional framers adopted an article of government that was unique and full of promise. It conceived a system whereby the state would establish political subdivisions in the unorganized areas to provide for special local services and needs. The framers had a vision that growth in the population and tax bases in the unorganized areas of the state, as stimulated by the political subdivision, would rapidly lead to organized boroughs and municipalities, primarily designed around economic and natural resource commerce streams.

This vision was not actualized. Local governments have organized slowly and the boundaries have been rigid. As a result substantial revision may be necessary if the decentralization of power and maximum home rule in Alaska is to be realized.

One specific problem should be addressed. Art. 10, § 2, Local Government Powers currently provides:

All local government powers shall be vested in boroughs and cities. The state may delegate taxing powers to organized boroughs and cities only.

Art 10, § 6 provides that,

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

The courts have had problems construing the effects of these two sections. Recently a superior court in Juneau ruled that, notwithstanding the provision of Art. 10, § 6, that the language of Art 10, § 2 (the state may delegate taxing powers to organized boroughs and cities only) prohibits the legislature from authorizing service areas or other political subdivisions from levying taxes or assessments in the unorganized borough. If that ruling is allowed to stand by the Supreme Court, and clarification amendments are not

offered, the language of art. 10, § 6 directing that maximum local participation and responsibility will be provided for is meaningless.

H. ARTICLE 11 INITIATIVE, REFERENDUM AND RECALL

Section 2, 3 and 4 of this article deal with provisions for filing, certifying and preparing petitions for election. Sec. 2 provides that if the lt. governor finds the initial application to be in proper form he should so certify, but no time limit is placed upon the certification process. In some instances the lt. governor has taken months to certify the petition, thereby cutting into valuable time for the initiative sponsors to seek signatures. A suggested time limit is 30 days.

III. THE CALL FOR A CONSTITUTIONAL CONVENTION

The call for a constitutional convention may be effected by three different means. The legislature may call a constitutional convention at any time. Art. 13, § 2. If during any ten year period a constitutional convention has not been held, the lt. governor shall place on the ballot for the next general election question: "Shall there be a constitutional convention?" If the majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten year period. Art. 13, § 3. 1/

The third method for calling a constitutional convention is through the initiative itself. Just prior to

1/ In 1970 the voters voted in the affirmative to call a constitutional convention. However, the outcome of that election was challenged in court and ultimately voided by the Supreme Court. Boucher v. Bomhoff. The question was again put to the voters in 1972 and this time was narrowly defeated. As a result most persons studying the question have concluded that the question need not be put on the ballot again until 1982.

the vote on Art. 13 at the convention delegate Kilcher rose with a question.

Kilcher: In sec. 2, it says that the legislature may provide for a constitutional convention. Does that legislature in this case also mean the law, including initiative? We have a general policy that was adopted a few days ago that the legislature would include initiative and also, I think Mr. Roberts yesterday in a discussion seemed to have been of the opinion that an initiative can call an amendment, when we discussed the capital question, so I want to have this understood. Constitutional Convention Proceedings, page 3439.

In response to delegate Kilcher's question, two delegates from the appropriate committee answered:

President Egan: Mr. McLaughlin, could you answer?

McLaughlin: Mr. Chairman, I am convinced that the word "legislature" in sec. 2 means that the people can, by initiative, pass an act calling a constitutional convention and making provisions in it. Id, page 3439.

* * *

President Egan: Mr. Hankel.

Hankel: I was going to attempt to answer Mr. Kilcher's question. During the committee meeting, it was discussed at considerable length, and it was the intent of the committee that through the initiative they could initiate a call for the convention, but the people could not initiate an amendment to the constitution itself. Id, page 3440.

President Egan then placed Art. 13 before the convention for a vote wherein it passed unanimously.

Unless otherwise provided by law Art. 13, § 3 requires that the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including but not limited to, number of members, districts, election and certification of delegates, and submission and ratification in the revisions and ordinances. In practice this means that the Legislature, or the people by initiative, may establish the place of the convention, the time at which it will convene, the length of the convention, the date of election of delegates, the qualification of delegates, the apportionment of the delegate election districts, that election of delegates shall be made without

reference to any political party affiliations, and the manner of presenting the amendments to the voters. 2/

Any constitutional convention shall have a plenary power to amend or revise the constitution, subject only to ratification by the people. Art. 13, § 4. The short meaning of this is that no call for a constitutional convention may limit the powers of the convention.

IV. APPORTIONMENT OF THE DELEGATE DISTRICTS FOR A CONSTITUTIONAL CONVENTION IN ALASKA.

While the provisions referred to above may not meet the agreement of all persons, they are certainly rather straight forward. The major uncertainty for the 80's with regard to a any constitutional convention in Alaska surrounds the apportionment schedule for the delegates. The point should be stressed clearly that the executive does not have the power to apportion the delegates to a constitutional convention in Alaska. This power is reserved to the legislature or to the people by initiative. Since Alaska has not encountered legislative apportionment of any kind on the statewide level, a question deserving much thought and debate should be: What are the appropriate processes and standards for the apportionment of the delegate districts to a constitutional convention by law? A simple answer to some might be to apportion the delegate districts on the same schedule as the legislature at the time of the convention. Two problems are presented by this approach. (1) the constitutional convention is a unicameral body. Very few unicameral bodies have an even number of members to reduce the obvious problems of deadlocks on important votes and organization. (2) Any legislative body or a constitutional convention must

2/ A call conforming to the 1955 call would certainly violate the equal protection clauses of both the state and federal constitution with regard to delegate apportionment. This matter will be discussed in more detail subsequently.

be apportioned according to the principal of one person - one vote in order to fulfill the requirements of the equal protection clauses of the State and Federal Constitutions. Reynolds v. Sims, 377 U.S. 533 (1964). Deviations within tolerable boundaries from the one person - one vote principal are acceptable if the apportionment schedule is constitutionally adequate at its inception and if there is a definite plan for periodic reapportionment. In some instances, then, the state legislature could be demonstrably malapportioned but still constitutionally acceptable because of a permissible plan for periodic reapportionment. The convention, however, would have to be constitutionally apportioned at its inception. In short, in order to insure a constitutionally permissible apportionment schedule, provisions of law must guarantee that the convention is permissibly apportioned at its inception and cannot be based entirely upon another apportionment schedule that may have been permissibly apportioned in the past.

The primary experience to draw from in apportionment schedules by law rather than by executive proclamation develops from legislative apportionment. Alaska is in a significant minority by apportionment of the state legislature pursuant to executive proclamation. The vast majority of the states provide for legislative apportionment subject to veto by the executive. The legislative apportionment of a constitutional convention in Alaska would likewise be subject to executive veto. Major issues for thought and debate follow.

A. BUILDING BLOCKS

Early in this century local government boundaries were utilized as the smallest population unit acceptable in building districts for legislative apportionment. Many state constitutions required this. However, due to the evolution of the one person - one vote rule, states contemplating reapportionment have had to walk a tight rope between dividing local government and political subdivisions and

constitutionally adequate equality in districts.

Art. 6, § 6 of Alaska's Constitution directs that "[E]ach new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio economic area." Unfortunately this provision appears directed solely to the legislative apportionment and not to the apportionment of any constitutional convention. Inherent in the concept of geographical legislative districts is a recognition that areas of the state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Federal constitutional standards are blind to any desire to effectuate representation of those areas of the state having common interests and instead only rely upon the goal of achieving numerical equality. As a result the building blocks of contiguous and compact territories containing as nearly as practicable a relative integrated socio-economic area may be used in order to effectuate constitutionally permissible apportionment of the delegate districts to the constitutional convention but their use is not required and numerical equality is the only substantive standard. Only public pressure on the legislature will result in a legislative reapportionment scheme scheduled for the constitutional convention that recognizes building blocks of these relatively integrated socio-economic areas.

B. DEVIATIONS.

Once the legislature has resolved to its own satisfaction the type of building blocks, if any, it would use, the next problem to solve would be permissible deviations from the average district. Regarding population deviations, the Supreme Court has adhered to a rule that "under 10%" deviations are of prima facie constitutional validity only with regard to state enacted apportionments. Deviations of

that magnitude can be justified only if they are "based on legitimate considerations instant to the affectuation of a rational state policy." State courts have traditionally allowed for more deviation. After the 1970 census eight state senate plans had a deviation range of over 15% which withstood constitutional scrutiny as well as ten house plans. Again, it appears that only public pressure will guarantee deviations from the average election district with less than 5%.

C. MULTI-MEMBER DISTRICT

When challenges have been made to the employment of multi-members districts (especially in combination with single member districts) the argument has been advanced that their use produces larger deviations and could have been achieved had single member districts been used exclusively. To a degree, this generalization is substantiated by the range of deviations that resulted from utilization of different types of district schemes. While over 70% of those states which use single member districts exclusively in their first senate plans achieve the range of deviation of 5% and under, only 15% of those states using the combination of single member and multi-member districts were able to accomplish the same degree of equality. Implicit in many of the judgments made by individual courts has been the following: Where states were unable to achieve low enough deviation and where they made use of a combination of single member and multi-member districts, single member districts would have to be utilized in spite of any previous long standing tradition concerning the use of multi-member districts. Alaska does not have any longstanding tradition regarding the use of multi-member delegate districts for a constitutional convention.

Federal courts will defer to multi-member districts if they are reviewing a plan instituted by the state that identifies and reconciles traditional state policies regarding

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historical, ethnic, economic and geographical significance. The federal courts, of course, possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the peoples name. The Supreme Court has adopted the posture that multi-member districting can contribute to voter confusion, make legislative representatives more remote from their constituents and tend to submerge electoral minorities and over represent electoral majorities. The most important point to remember with regard to a federal court is that it is held to a stricter standard than a state in devising a legislative apportionment plan, and unless there are persuasive justifications, a federal court ordered reapportionment plan must employ use of single member districts as well as achieving the goal of population equality with little more than a de minimus variation.

D. SPECIAL POPULATION GROUPINGS

The Seventh Circuit Court of Appeals, in Dunn v. Oklahoma, (1972), faced a challenge to a reapportionment schedule on the grounds that the schedule discriminated against a minority race because these residents were apportioned among several districts rather than having the district lines drawn to create a predominate black district. In its opinion, the court said:

A color conscious approach to districting, if designed to aid the blacks, is constitutionally permissible; if designed to harm the blacks, it is impermissible, but a color conscious approach is never mandated.

The court went on to say,

The the phrase "equal protection of the laws" means just what it says, not "more equal" or "less equal" but simply equal. The color blindness approach used in the instant case is preferable to the other alternatives.

In Alaska it would appear to be easier to demonstrate a districting designed to harm the native population of the state than was apparent in the Dunn case. Any apportionment schedule for delegate districts that did not account for shared representation of those areas of the state having a

common interest would certainly be challenged, but is unclear of the effect of such challenge in light of the absence of a provision requiring that the districts contain as nearly as practicable in a relatively integrated socio-economic area similar to that required by Art. 6 § 6 with regard to legislative apportionment. Again, it appears that public pressure and sentiment would carry as much weight as any legal or constitutional precedent.

E. CHANGE IN SIZE OF THE CONSTITUTION BODY

Provisions of law may clearly change the size of the constitutional body from the original number of 55. In 1971, HB 117, requested by the governor before the Seventh Alaska Legislature, provided for the constitutional convention with 65 delegates. That bill provided that 60 delegates "shall be proportioned among the election districts of both houses of the legislature as those districts shall be apportioned pursuant to the 1970 United States Census," and further provided for 5 delegates to be elected at large. HB 117, 7th Alaska Legislature, Sec. 3. Such an approach will also obviously release the legislature from the agony of drawing the delegate election districts, as well as meeting the goal of having an uneven number in the constitutional body.

IV. CONCLUSION

As stated at the inception, this memorandum assumes that there will be a constitutional convention in Alaska within the next decade. The purpose has been to familiarize the reader with considerations regarding weaknesses in our present constitutional framework and the significant issues that must be considered and addressed prior to any convention. If these issues and questions cannot be addressed in a stable and coherent manner, then it is unlikely that the highly emotional and political issues will fare any better. The preparation for a constitutional convention in Alaska will provide valuable insight for the type of convention that will follow.

Trip Log
Guy A. Van Doren
Administrative Assistant
Constitutional Convention Committee

- October 29, 1980: Travel status to Seattle and to New York
- Plane delayed four hours, arrived in
New York 2:00 a.m. October 30, 1980.
- October 30, 1980: Met with Mr. Bill Cassella, Executive
Director, National Municipal League. Made
arrangements to meet with Dr. John Wheeler,
Roanoke, Va., and Mr. Al Sturm, Blacksburg,
Va. Spent afternoon discussing project
with National Municipal League staff.
- October 31, 1980: Met with Mr. John Feerick, American Bar
Association relating to federal constitu-
tion revision under Article V, U.S.
Constitution. Mr. Feerick testified before
the U.S. Senate Subcommittee on the Constitu-
tion which is a subcommittee of the Senate
Judiciary Committee, regarding allowing a
limited national constitutional convention
vs. an unlimited convention.
- October 31, 1980 -
November 1, 1980 -
November 2, 1980: Began drafting report on holding state
constitutional convening using the facili-
ties and reference library of the National
Municipal League.
- November 3, 1980: Morning: Met again with John Feerick.
Afternoon: Met with Mr. Frank Gard, author
of constitutional studies and Director of
Legislative Drafting Research Fund,
Columbia University Law School. Discussed
Alaska constitution, was briefed on Mr. Gard's
work to date, requested his attendance at the
Friday meeting after he reviewed the work
the committee accomplished last interim period.
- November 4, 1980: Met again with Municipal League staff on
project and secured additional reading mater-
ial, continued report work.

Guy A. Van Doren
Trip Log - Page Two

- November 5, 1980: Began dictating report in the morning.
Afternoon: Met with Mr. Cassella and discussed reports and findings of other states, specifically the conventions in Hawaii, New Jersey, New York and Missouri.
Late afternoon: Continued report.
- November 6, 1980: Morning: Worked on report.
Afternoon: Met with Mr. John Bebout, Wellfleet, Massachusetts, on Alaska issues and Alaska constitution. Mr. Bebout is an author and lecturer on constitutional conventions and was a consultant to the original Alaska constitutional convention.
- November 7, 1980: Meeting with all persons scheduled for the New York meeting - Mr. Bill Cassella, Mr. John Bebout, Mr. George Braden, and Mr. Frank Gard. All day meeting. Transcription available.
- November 8, 1980: Saturday, Travel status to Washington, D. C.
- November 9, 1980: Sunday, continued work on report and brought notes up to date.
- November 10, 1980: (1) Met with Mr. Robert D. Evans, American Bar Association, regarding calling a limited National Convention under Article V of the U.S. Constitution.

(2) Met with Mr. David Keating, National Taxpayers Union on the above subject as well as discussing the Balanced Budget Amendment.
- November 11, 1980: Veteran's Day: Travel status to Roanoke, Va., and Blacksberg, Va. Met with Mr. Albert Sturm, Blacksberg. Mr. Sturm is an author and recognized cataloger of constitutional developments for the National Civic Review and the Book of States.
- November 12, 1980: Met with Mr. John Wheeler, Roanoke, Va. Mr. Wheeler is an author and lecturer on constitutional conventions and revision.
Travel status back to Washington, D. C.

Guy A. Van Doren
Trip Log - Page Three

- November 13, 1980: Met with Senate Subcommittee on the constitution, a subcommittee of the Senate Judiciary Committee, staff regarding hearings of the subcommittee on limited vs. unlimited constitutional convention on a national level. Obtained transcript of committee hearings.
- November 14, 1980: Travel status to Houston.
- November 15, 1980: Saturday: Met with Mr. Sam Gove, Director of Institute of Government and Public Affairs, University of Illinois and author on studies on Illinois constitutional convention. Attended and participated in National League's "Agenda for the '80's" conference meetings.
- November 16, 1980: Sunday: Met with Mr. Sam Gove and Mr. George Campbell. Mr. Campbell was associated with both the Arkansas constitutional conventions both as staff and as a delegate. Attended more of the conference meetings.
- November 17, 1980: (1) Met with Mr. Bob Atwood, Anchorage Times regarding the work the committee and I are undertaking. Mr. Atwood seemed very interested and supportive of the work of the committee.
- (2) Met with Mr. and Mrs. Jim Ray. Both were administrative workers for the Texas conventions. Mr. Ray was the Administrator-In-Charge of the convention and Mrs. Ray was his assistant.
- Met with Ms. Janice May. Ms. May is an author and lecturer on constitutional conventions and a professor at the University of Texas in Austin. She was also a consultant to the Texas convention.
- November 18, 1980: Travel status from Houston to Juneau.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Meeting with Sam Gove and
George Campbell
November 16, 1980
Houston, Texas

Tape I, Side 1:

004 Van Doren: Introduction of tape materials.

009 Sr Gove: I think if you did something like the Braden-Cohr it became known, the Illinois annotated constitution, it would be worthwhile, even though you didn't have a constitutional convention, it would be a good reference, for lawyers and summarize all the cases that have come down and affected a particular section in the constitution. And some commentary on why that particular section was there and you may want to have a comparative analysis. That was extremely helpful for our delegates and became the Bible. It took an awful lot of work.

Van Doren: In New York I met with George Braden, and we talked quite a bit about it. One of the things I wanted to ask you is, is that book available from a source in Illinois?

024 Gove: Yes, from our institute. I will make as many as you wish available.

025 Van Doren: OK, I think we would probably at least like to have one for the library. We are building up a library on constitution materials. The committee has seven members. Any-

way, when I spoke with George, he suggested the same thing, whether or not we have a constitutional convention, that definitely an annotated work of our constitution and/or a citizen's guide would be helpful and as he said, since our constitution is quite a bit shorter than Illinois', it wouldn't be quite as monumental a task as the Illinois one.

036 Van Doren: In talking with the people I met in New York, with George Braden, John Bebout, Frank Grad, and Bill Cassella, and also with Al Sturm in Blacksburg, Virginia, and Jake Wheeler in Hollins. Virginia. Everybody has stressed the preparatory work, in order to get this off the ground, and I think the legislature has realized and recognized how helpful it would be if we could get started on this. At the outset of the preparatory work, are there any other things that you think that would be useful both for the pre convention vote, and then should the vote be in the affirmative, for preparation toward the convention, from your experience?

050 Gove: I would say that if the vote is affirmative, you've got to start thinking about mechanics of the convention on how and where are you going to have it, do you need an enabling act, how you are going to elect delegates. I don't think that would take so long, so probably you could do that after the vote. We had some preparatory work done on issues we anticipated would come up in the convention. The commission, this was the governor's

research group, which I was the director of, and we came out with a volume called "Con Con" issued to the delegates, and it was paperback, 500 pages, and it was just everything we thought would come up of any substance, and tried to have someone write a paper and think about it and raise the issues, not to present positions, but the issues. That volume was helpful. There are a lot of issues we didn't anticipate, and I think you can't. Illinois was a strong Dillon's rule state, we didn't anticipate the support for the home rule issue. We hadn't done anything on the home rule. Most of the major issues we did anticipate, and we did have papers prepared for the delegates and they were able to get familiar with the issues. The papers came out during the campaign for the election of delegates well in advance, so I think something like that might be helpful and again would be good library material for the convention.

083 Van Doren: Were these papers prepared by people from all over the U.S. or just within the state?

091 Gove: Instate. I think one of them was on the purpose of a constitution and was done by a law professor in Michigan, and I think the other papers were all by Illinois people, and were a mixture of law professors and political scientists.

091 Van Doren: Do you think that the papers helped the delegates or do you feel that they relied more on their own ideas, or

that they drew from the book and the ideas that were prepared, or do you think that it was kind of a combination of both?

094 Gove: I would say a combination of both. There was nothing in the article on the bill of rights about ERA, and that became an important issue, and people campaigned on it, and subsequently we now have an ERA provision in our constitution, so it's things like that which were natural. Delegates brought up specific things.

103 Van Doren: That "Con Con" book, is that the orange and blue one, very thick one that has Con Con on it? (Yes). OK, I have seen that and would like a copy of that too.

105 Gove: It is out of print. We might be able to get at least one loaned to you. It was published by the University of Illinois Press.

108 Van Doren: Yes, I saw the book and actually went through it, somewhat, and I was curious to see how you felt, I know one state that we were discussing had almost prepared a constitution before the delegates were even chosen, and people kind of rebelled against that. It was the Texas one.

113 Gove: Some states did, but we carefully did not do that, and in the annotated constitution there was some discussion of issues, but it doesn't come out and say "The delegates shall", this after all, was their prerogative. It was very carefully worded.

119 Van Doren: Did Illinois have a preparatory commission?
(Yes) And how was that chosen? Was it chosen by the legislature or the governor, or a combination of both?

124 Gove: It had legislative and public members. There were three commissions, and on the last commission I was a public member. I think I was elected by the legislature. Why, I am unclear, historically in Illinois, there were mixed commissions with gubernatorial and public members, but the legislature was beginning to feel its oats in insisting that a legislative commission would be composed of all legislative appointees, even though they weren't members of the legislature, and I think at that time they had gone on this commission through legislatively appointed public members. It wasn't really a legislative body. The last commission, the commission that argued over, the first commission made the recommendation to vote on a constitutional convention, the second commission started the preparatory work and then the vote came along, and they had to pass the enabling act, and the big issue, there were a lot of issues, but the biggest issue was on whether the delegates were to be chosen on partisan or nonpartisan basis. This commission

recommended nonpartisan and it ultimately prevailed. Then the third commission actually made the arrangements for the convention and arranged an orientation session. I think all this type of detail is in our book that Tom Kitsos and I did for the National Municipal League.

152 Van Doren: On the, OK, so the third commission did all the preparatory work. They are the ones who commissioned these papers and also the preparatory work for the actual mechanics of the convention?

156 Gove: The second commission commissioned the Braden-Cohn volume. They decided not to get into any issues and consequently the governor filled the void by creating the constitutional research group, with private funding, and I also got in on that as director, so I was wearing one hat as, I was staff member of the second commission, and a member of the third commission, and also at the same time turning out these papers, theoretically for the governor.

165 Van Doren: Did the commission stay in existence after the beginning of the convention or did they work right up to the convening of the convention and then were they finished?

171 Gove: I think it, in essence, ended when the convention,

egan, we held an orientation and such, and then the convention itself, a couple of days before the convention we had an orientation, so I think the commission just went out of existence. I am very vague on this, the statute said the commission would go out of existence, I think it did.

182 Van Doren: One of the reasons I had asked that question is last year the legislature for the State of Alaska passed an enabling bill to call a constitutional convention, mainly because they wanted the advance work done, so that it would be on the books with no appropriations or anything, but just setting up the mechanics of it, and one of the things that was put in the bill was that a preparatory commission would be established, the appointments and all of that, and then I believe it would continue until approximately 15 days if I remember correctly after the start of the convention so that it would still be around to assist with anything, that comes up, but basically it dissolved at that time. The bill passed both houses of the legislature and was subsequently vetoed by the governor for several reasons. There is really no need to go into that now, but one of the things that they will probably do this next legislative session, is again try to get enabling legislation through so that it is there and there will be a mechanism for calling a convention. Our constitution states now that as much as practical, the convention will be held in the same way that it was in 1955. Well, it's not practical at all,

and there's a lot of changes that need to be made.

204 Van Doren: George Campbell just came in, and I've asked him some of the basic questions that I asked Sam Gove.

209 Campbell: Arkansas has a constitution which is similar to many southern states in that it is a basic reconstruction period document. Written in 1874, and amended now more than 60 times. The first modern impetus for constitutional revision came about in 1966 when Rockefeller was elected as the first Republican governor since the reconstruction time. One of the things he wanted to do was have a modern constitution for Arkansas. The legislature was dominated by the Democratic forces and did not intend to cooperate with him and did not cooperate with him. They did not support him as governor. The compromise that was reached in his effort to have that legislature, which seems to be the only way, since our constitution is silent as to how to have a convention, everyone seemed to feel that the legislature had by law to say there will be a convention and provide for the election of delegates. Since that historically was the way it has been done in Arkansas and there seemed to be at least some judicial as well as historical precedent that that was the way the people had to speak, that is through the legislature submitting the question on election of delegates. In the 1967 session of the legislature, where Rockefeller attempted to get a call

of the convention, he failed, but a compromise was reached and there was created the Arkansas constitutional revision study commission, composed of thirty people appointed by various elected officers and the governor had authority to appoint the majority of the commission.

234 Van Doren: Did the legislature appoint it?

235 Campbell: The legislature, the president pro-tem in the senate, the speaker of the house, each appointed five persons. Five were appointed by the chief justice, five by the president of the Arkansas Bar Association, and whatever that leaves, among the appointed groups. I think the governor had ten, and should add up to a total of thirty. I served as the executive secretary, a non-voting, salaried member. I'm a lawyer in private practice in Little Rock, my specialty through the years has been in municipal finance which brings me into contact with a good part of the constitutional provisions that relate to local government, limitations of debts and the organization of municipal governments. And, to some extent, the state legislative process, too. The work product of the study commission was in part an effort to justify the holding of the convention. A number of people who were appointed were individuals, not necessarily associated with the governor, but individuals who had been interested for a period of more than 10 years in having a good constitution. What we were dealing

with was not something just in a vacuum, but the political situation was that a number of people, democratic, republican, non-office holders, non-political types, had recognized for a long time that we needed to modernize our constitution. So, ultimately, a majority of our study commission voted to recommend to the legislature that a convention be called, because the total substantive volume of changes that needed to be made was such that it really couldn't be handled with the existing amendment process. Our legislature is permitted to submit only three amendments in each general election, each two years. Any other amendments have to come to the initiative process. We have an initiative and referendum provision roughly patterned on Oregon's in the early 1900's. It's not particularly difficult, but expensive, bothersome, it's hard to organize and all that stuff, except for very narrow special interest types of proposals, where the money or the people can be found for very narrow economically related amendments. The product of the study commission was a draft document. We were careful to style that draft document as simply a study document, and in many of the articles and sections we presented alternative solutions to what our commissioners conceived as problems. The study commission was presided over by the former dean of our law school at Arkansas, a respected scholar and a rather apolitical figure. He is not closely associated with any candidates or party affiliations, although he is commonly a Democrat, but it was not a partisan study commission, even

though it started out, its origin was that way, it didn't emerge as a partisan group. It had pretty good press coverage and we had among the people who at least were interested at all, we had a pretty good feeling about the work of the study commisison. The biggest argument we had was whether to submit the question of holding a convention to a special election or a general election, presumably because the people who were in favor of it would more likely turn out at a special election than those who were opposed to it would stay home or not care anything about it. The contrary feeling is that you turn out more people at a general election and many of those are uninformed about issues such as that, and therefore tend to vote against things they don't understand or never heard of. The legislature did decide to put the question of holding the convention in 1968 on the general election ballot, and surprisingly, most of the legislators who didn't think anybody cared about a constitutional convention, the issue passed. So we had called then in 1968, our convention. Curiously, in order to save money, we had people running for delegate positions in 1968, on the same ballot that the question of the holding of the convention was being submitted, and many of us who ran, and I didn't run for delegate position, did not know whether there was going to be a convention or not. The campaign was rather quiet, there was not a lot of money spent by delegates, and for the most part, they were, in broad categories what I would call good government type people, that is, they were not the people who had great political ambitions. Otherwise, there

was only one legislator out of a body of 100.

310 Van Doren: That was my next question. Was it a partisan election or bipartisan, and I was going to ask whether any legislators were on there, too.

313 Campbell: It was a nonpartisan election. There was no nomination process. It was required that you got a majority of votes in order to win the position, so in some cases, there was a run-off election two weeks after the general election, which almost nobody turned out for. The unusual measure, to my knowledge in modern times, was this was the first time there had ever been a run-off following a general election. Arkansas is predominately a two party, I mean a one party state, the Democratic party, the minority party candidates almost never run, and if anyone else ran it was certainly not more than one other party. The legislators were not excluded. We thought a long time in drafting the legislation for the convention and submitted it to the legislature, to put in an office holder exclusion. It is probably a good idea, but it was not considered politically smart to sort of flaunt that in the face of the legislators, whom we were asking to put the question on the ballot and to appropriate money, ultimately, for the operation of the convention. So we did not, since there had been no historical experience in recent times, there was no reason that legislators should or should not serve. We have a constitutional provision which

makes it a separation of powers argument which makes it pretty hard for a legislator to hold a public position in any other kind of government, except for having a school position, school superintendent, or a school board members. So, while we seriously debated, we did not exclude legislators. As I say, only one ran, he had served as a member of the study commission, I worked with him closely. He and I were totally opposed in almost every major position that we held, but he was the kind of person who was genuinely interested in what he was doing and provided a sort of focus for conservative impact, a focus for the conservative interest in the convention, and led them in a fairly reasoned way, so his presence was not political in the sense that you would think. Many times, state legislators focus on very narrow issues or the things that by and large makes it undesirable for them to serve because they are used to legislating and not dealing on the broader aspects of constitutional draftmanship. Now, our convention was called. It was funded adequately by the legislature. Not generously, but adequately. We met over the course, on and off, over the course of about a year, proposed a document and submitted it in the 1970 general election. It was not a radical reformation, but it was a fairly progressive reformation, and it was defeated by a vote of somewhere between 55 and 60 percent in the negative. It is probably not as much interest to the people in Alaska about the particular issues that we had, although I would be glad to go

into the particular things that we had that were problems. Most of them had to do with limitation or the removal of limitations on the property tax. There were a few very crazy things that we need to be careful about in drafting a constitution, for example in one preparatory phrase, the one word "God" was omitted just because we were moving from sort of Victorian English into the 20th Century English, and it didn't seem to be terribly important to most of us, but there were some fringe groups out there somewhere, fundamentalist ministers and other people, who said we had written a Godless constitution. Now, this wasn't a major point, but that was the kind of thing you pick up when you start changing old language which never meant anything for 100 years. It was never judicially interpreted, didn't mean a thing. You pick up people who want to argue about those things. A few other odds and ends like the constitutional provision which legalizes horse racing in one particular county in the state, these things all have historical basis and local political situations change from time to time, but you probably don't have in the relatively short life of your constitution, as many changes that have crept into it, in terms of local vested economic or political issues of that sort. If you don't have, that's very good, because then you can deal with what a constitution really ought to be about anyway, and that's the fundamentals of the operation of the system government and fine tuning of those,

after several years experience where something has not worked or it is not working as well. Unfortunately, older states, and particularly one which is slow to move on constitutional reorganization have to deal with a lot of minor unimportant things in terms of fundamentals of government, which are local issues with small groups of people. Now, the effort in 1970 failed, but from that convention came a number of things which could be dealt with legislatively or almost as well legislatively as they could have been in the constitution. I think some of the fundamental mistakes we made in some areas was where we were trying to legislate in our document when we weren't there to legislate, and we probably invited a few enemies, for example, we've had a fixed price structure on liquor prices in our state for a long time. Our constitution wanted to outlaw the so called fair trade prices for liquor. That was not a constitutional matter, but it was something that the legislature, because of the perceived domination by wholesale and retail liquor interests had never bothered to change. We thought we would get some support from the constitution and some of the people at large, if we took out the fair trade liquor prices. Well, what it ultimately turned out to be was that most of the people didn't understand the issue and didn't give a damn, but the wholesale and retail liquor people put up a lot of money to fight the new constitution because of the economic disadvantage. At any rate, in the process of the next three sessions of the legislature, a number of concepts which we proposed, reorganization of the executive

branch, and indeed in 1976 the legislature proposed itself, as a constitutional amendment, almost verbatim, the legislative article which was in the 1970 constitution. So we provided a focus and created a little stir of interest in a number of areas.

Now, all during this period of the last two years after the failure of the '70 convention, there was a lot of head shaking around, and people saying, "You know we really ought to have passed that constitution." Now in 1976, a young man named David Pryre was elected as the Democratic governor. No, David Pryre was elected in 1974. David Pryre, as a young legislator, had been one of those very outspoken in the early 1960's before the Rockefeller administration, had been outspoken in favor a constitutional convention. He had served in Congress here and there, and later came back as governor, elected in 1974. In 1975, his first term, he proposed that the legislature call and establish, not submit to the people, but simply just call a constitutional convention. Which it did. And it was one of his principal pieces of legislation, and the convention was to be limited in scope, that is there were certain areas of the 1874 constitution, with which it was not permitted to deal, and the delegates were to be appointed, rather than elected. His idea was to do it, do it quick, get that group in, and there was to be some balance

in the appointment, he wasn't going to appoint them all, although he was going to appoint a majority. But to get the group in, give it the 1970 document, let it tinker around with it, and deal with those things which had been perceived to be its weaknesses, and turn out a new document very quickly so that it could be voted on at the next general election. Our supreme court held that the legislature did not have the power to call a limited convention, that is to limit the scope of discussion, without having submitted that question to the people. This was essentially a case of first impression as far as Arkansas law is concerned. The general theme of the decision was that the inherent right of the people being represented in this convention to change their form of government should not be limited by the legislature, saying that the people in the convention cannot deal with certain areas, and if the people want to vote for a convention with that limited structure on it, that's fine, but you have got to submit the question to the people. Well, by the time that it had gone through the court and been decided, it was an issue then that the governor no longer wanted to push and he and other things that were of more interest to him, and he did not particularly push it. However, in the next session of the legislature, a bill was put through to be voted on in 1978, on the question of holding a convention. So, there was another convention held, there was another body of 100

delegates elected from throughout the state, in the manner that our house of representatives is, not exactly single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. No, at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

Again, I'm not sure that how much is applicable to your situation, but I think there was a definite contrast between the structure of the delegate body between the 1970 and 1980 conventions. In 1970, as I indicated, those of us who ran for delegate, did not know whether there would be a convention or not. I haven't described it exactly, but in '79-'80 period, there was definitely determined that there would be a convention, because of the way that the two votes were held, and it was known by the persons who ran for the delegate positions that they would indeed to go the convention. Also, during this 10 year period, I think there was a focus of a good many special interest groups. The special interest groups had in time, become aware of the fact that there was certain things in the state constitution, and in some cases, they impacted on them. There were other things that had been going on in the past 10 years of course, that were represented by special interest. The problems in the cities had not gone away, they multiplied, and this convention, for example, came out with an article that was almost verbatim to the one that I helped draft on local government, which moved the key words around here and there and so forth, but they didn't come out with any better situation than we had done. So, economic conditions had changed, focus of inflation, the concern over taxation, some of our problems in structured county government had been changed as a result of constitutional amendment. Problems from 1874 and the old amendments

were still there, and the convention didn't do, in my judgment, it didn't do quite as good a job from the technical drafting point of view, because there were far more compromises required to be reached.

Tape Two:

004 Campbell: I have a slightly prejudiced point of view with respect to special interest groups, and I should share them with other people who would say that the convention did a wonderful job, but among the things that I think, just count this for whatever you want, but I think the purity of heart or whatever you might want to call it of the delegate body in comparison with the 1970 and 1980. There were more people who were less focused on specific economic issues in 1970 and were more interested in doing what they thought was participating in a historical event, for the first time in 100 years, that they agreed to rework the document. In 1980, the idea of a convention was not absolutely new. In 1970, the lobby, the traditional lobby groups, did not know how to work with the delegates, because fundamentally, we weren't lobbyist material. We didn't have any political ambitions. Now, that is not to say that there were not some people who emerged from the convention to later hold political office. For example, there were a couple of people, and I

didn't even know they were interested, who ran for political office, and a man who became the state's attorney general, and later served in Congress and ran unsuccessfully two years ago for the senate. But for the most part, they were professional people, probably too many lawyers, which is always and has been the case, you know, lawyers have an extremely different view points, there is no uniformity on view points, among lawyers, and they traditionally represent different economic interest, and have different ideas about things. They just simply like to disagree, so if you have to limit anybody, besides limiting legislators, you might limit lawyers. (Laughter). From the federal constitutional standpoint, we simply didn't have as many axes to grind in 1970. In 1980, as I have indicated in the tax decision by the Arkansas Supreme Court, other concerns of that sort, minority groups were better organized, and better focused, and indeed we had a better minority representation, and by that, primarily I mean the Blacks, in the 1980 convention, than we did in 1970. One of the delegates in the Black caucus, served in both conventions. The political forces and the political ladder-climbers saw the convention as a way to get involved in government and people who wanted to run for other offices, which created some problems with the legislature, because they saw people running for delegate positions, and they then thought they would see, two years later, those people running against them for their particular seats. Somebody will have

to do a scientific study and sort out the special interest groups. I don't have names or numbers with respect to that, except it is clear that there were people who were more susceptible both through the efforts of lobbyists who were more representative of narrower segments of communities in terms of economic interest, and employee groups. As a consequence, their discussions tend to be more focused on those lines than our discussion in the 1970's, which I brought. Perhaps not approaching the constitutional convention of 1787, or whatever, but at least feeling more fundamentally with the philosophy of structure. I am not saying necessarily that that is wrong, but I think it is something that you should be aware of that in a situation where you know there is going to be a convention and where there are particular interests which have been identified as being affected by the constitution or likely to be affected by the constitution, it is not unreasonable to expect that there will be effort to load up the delegate body with pressure with one point of view or another on any question. The labor experience in Illinois, it is probably better than in some states, which has better organization, let's say stronger organization. Labor never has been a force which could elect very many delegates in Arkansas. Labor had better representation in 1970 than they had in 1980. Indeed, between 1970 and 1980, labor had attempted to repeal the right to work provision in the Arkansas constitution, and it has failed by a vote of three or four to one. So the 1980 delegates didn't give

labor the time of day. The people had spoken recently on that issue, and therefore, they didn't see any reason to waste their time. The banks were much more evident and created strong lobby effort on trying to deal with the 10 percent limitation, and indeed that was one of the forces that caused great difficulty with the document and the submission of the document because it was identified by many groups as being a pro-banker's constitution. The raised interest rate, which would require the poor man to pay more. With respect to the technical organization of the 1980 convention, as I say, they built on and used for the most part what we used in 1970. They didn't attract quite as strong a staff because the idea of a convention wasn't as new and it wasn't as different. It was somewhat more politicized and some of the people that I thought were really first rate staffers that we had in 1970, you know it was ten years later and they had other career interests. There was some better support on the legal side, because some of the things that were coming before the convention had been in the court, property structure things, the attorney general had been trying to wrestle with that. The governor's office had been trying to wrestle with it, and some other groups had. We had done not extraordinarily good staff work in terms of papers, we didn't publish anything like the nine foot shelves of material that New York did or anything like that. We didn't spend a million dollars doing that. Most of

the background work had been preserved from our 1970 work and some of it was available. We were, because the university now has a law school in Little Rock, able to call on the faculty people from the law school, it was really a large help. It was something that we didn't have in 1970. Really I guess that is the end of the monologue in terms of trying to discover the ground of what has happened in 12 to 14 years. We have talked about more specific things.

101 Van Doren: Some of the states have done it and some haven't, and in both of your cases, did the preparatory commission work on temporary rules for the convention prior to the convention meeting?

105 Campbell: Yes, we did in both cases. In both Arkansas cases, the study commission did develop. I have forgotten one job I had, in 1967, after we made our report to the legislature to the special session of the legislature which convened in 1968, the one which called for the submission of the question. Assuming that there was to be a favorable vote between the submission of our work product in March 1968, and the placing of the issue on the general election ballot to be voted on in November 1968, we had a little surplus left over in our appropriation for the study commission and the governor created a preparatory commission composed of

myself and two other people. The two people who had been the chairman and the vice chairman of the study commission. I had forgotten that we had had that little interim preparatory commission for six or seven months in 1968. What we did, largely, I carried over my principal research person. We carried over the principal staff person that we had on a modest salary because we really wanted him to be available to head the research staff if there was a convention in 1968, and his primary task was to assemble a proposed set of rules for the convention, both temporary and permanent rules. I am not sure where we borrowed those rules. We kind of patched together a set of rules from New York, some from Michigan, I can't remember where Illinois was at that point in time. Maryland was a very good model for us in many respects, and indeed now that I think about it, we may have borrowed more from Maryland than almost anyplace else, in terms of structure. Some of our drafting techniques we borrowed from Alaska and Hawaii because those had been the two most recently drafted new constitutions, and when we were looking for fundamental structures of things and how to really simplify things that didn't have a whole lot of history built into them. We looked at some of those, but now that I remember, Maryland was running just about a year ahead of us, in terms of the time table. Maryland did not have that much of a difference in history than Arkansas had in terms

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '80 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

lar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way. Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

group. As long as you have a group which is perceived to be an aid to simply get material together and giving people at least a way or a perhaps an alternative way to look at solutions, delegates will receive that material well, and indeed, when they get there the first few days, if someone hasn't done that work, they are going to be mad as hell, and say why did you get all of us down here, I'm away from home, I'm not being paid enough to be here, and you hand me a book that says it is a constitution of 1874 and you don't tell me anything. One other comparison I would make between the '70 and the '80 group, and again, it relates to lawyers, and the kind of people who ran. The '80 group was probably a less informed, or that is a less well-educated group on the whole, with respect to both political issues and certainly with respect to constitutional issues. This sounds unfair, I don't mean for it to sound that way, but in '70, we had I would say, a superior group representative of the lawyers, that is people who were mature and established in a profession and people who were not special interest oriented, as such, in terms of lawyers as a group. In terms of the lay persons who were there, they were clearly more of the community leader type. They were bankers, retailers, or whatever they might happen to be. This is true of men and women. In the 1980 convention, I would say that we probably had a somewhat younger group of people, less well established in the traditional terms of leadership in business or profession.

I don't mean to say they were any less intelligent, but they were not perceived to be of quite the same status of community leadership in their various fields. And, as far as the lawyers group was concerned, it did not have as many people who were from the so-called established firms, as were from elements of leadership in the bar association structure, and so forth. Now, I don't know if that was purely just coincidental, or whether it was not a crusade, and you didn't get some busy bank executive to agree to run in 1980 because it would seem to be more of a political job and less of an event that it was in 1970. I didn't run, simply because I was, number one, I thought I had done all I could do, and I didn't feel that going out there and going through it again was worth the effort, personally, from everything that I had a solution to, the problem was already written down, in either one of two documents. Secondly, my professional work, the maturity and level of the responsibility that I had in my firm and the opportunity to make money was greater in 1980 than it was in 1970. I simply wasn't able to make that move. I do not regret it now. I enjoyed the days that I went out there to testify and sit around and tell everybody how they ought to do things, but I didn't enjoy, didn't miss, those endless hours of somebody droning on every day about something that they didn't know anything about or that they disagreed with.

249 Van Doren: Sam, what about Illinois, about rules preparatory rules?

250 Gove: The commission did prepare rules. The commission also acted as a repository for job requests for the staff of the convention, and particularly the job of accepting applications, and so forth, some members of the convention were furious that we were pre-empting their activities, and we shouldn't have even done that. There was some unhappiness on the rules that we were telling the convention how to operate. There is the sensitivity that the convention is a free agent, and they should not be, frankly, told how to do this or that, and with all the preparatory business, you must be very careful to make suggestions, but put it in such a way that you try to be helpful, not telling them how to run their business.

266 Campbell: If I may say there, I think if at all possible, of course it depends on the timing of the election and the meeting of the convention, and other things like that, but if you are going to put out a lot of paper work, even though people probably won't read it very carefully before the day before they go down, or when they get there that night, it helps, I believe, to dispell this suspicion if you get that stuff out to them as far in advance beforehand as

you can, with the most self effacing cover letter you can think of, that you are not trying to tell them how to do anything, but here is what has been done before, and you can study it and change it, and one of the first orders of business on the convention session will be to create a rules committee or to do something about rules. Our temporary rules were two sheets of paper, or something like that.

It is pretty obvious that nobody was stacking anything in terms of the temporary rules. They were very insignificant and in our structure the Secretary of State, who had no other provision and no other function except to certify the results of the election, was the convening officer.

The governor was not the convening officer, it was not politicized in that respect. The Secretary of State called everybody to order and made sure that the delegates had been properly certified as having been elected and sworn in and immediately after that, they proceeded to the election of their officers. Approximately in that sequence.

292 Gove: Just for the record, I should say our convention also used the Maryland convention pretty much as a model for rules. One of the important decisions we made in the rules was that the seating of delegates shall be alphabetical and that really made a difference in how the convention operated. If we had allowed people to be by districts, that would have meant that the Chicago people sat right next to each other. Things which don't seem terribly important can make a difference.

301 Van Doren: Sam, where was the Illinois convention held?

302 Gove: It convened in the House of Representatives, but then the convention moved to the old state house, where Mr. Lincoln was always in presence and voted in the house divided. Here again, the theme set a tone. Things like this can make a difference.

309 Van Doren: George, how about . . . ?

309 Campbell: Both conventions met almost exclusively in the House Chamber of the present capitol. On a couple of ceremonial occasions, we did meet in our old state house. We have an 1836 structure which is fairly well preserved, although it doesn't have enough desks and seats, and was never designed for a legislature of the size of our current legislature. From the stand point of the economy, facilities, telephone, all of the housekeeping things that you need, we felt there was only one place that we could meet. It would have been terribly expensive to rent on a long term basis, a hall somewhere. We could meet in the house chambers, when the legislature was out of session, we have a sixty day limitation on our legislative sessions, with some exceptions that it generally runs a little bit longer, but 90 days is about the longest they ever meet. So, the chamber was available in late spring and summer, when our convention was really working.

326 Van Doren: In either case, were there public hearings held any other place in the state rather than at the meeting place? Either one of you, Sam?

329 Gove: Yes, our committees or subcommittees held hearings throughout the state. I don't know how important they were in getting information into the mill, but they were good P.R., and it helped some of the delegates get around and see some parts of the state. Illinois is a very sharply divided state, a lot of Chicago people have no feel for the rest of the state, so this was quite helpful to get them around the state, and to just to hear different people talk with different accents, Southern Illinois is quite different from Chicago.

342 Campbell: I would say our differences between the various sections of the state are perhaps not as pronounced in Illinois, between the people who live in Little Rock or other parts of the state, but most of us came from smaller communities in the state. There is in the small communities, a very definite sort of paranoia about that the people in Little Rock are dominating the scene, real or unreal, mostly unreal. So both, and we started this in the study commission and it carried over in the '70 convention and I believe, although I am not as familiar with the '80's one. I believe the convention did it as much as they could. In the study commission, we were trying to create, quite honestly, a

public awareness. Hearings held out in the other places in the state, were as much propaganda as they were interest in hearing from people. I don't mean to say we didn't want to hear from people. We used primarily state college facilities. Almost all of the colleges were happy, and being that one of the members of the study commission, was a college president, they were happy to have us on campus. It gave some publicity, it gave something to the students to see and hear. We had a state college president and we had the largest private college president as a member of the study commission. We moved around in different parts of the state getting input from county officials, and municipal officials. One of the most memorable hearings we had was down in the southern part of the state, where we invited people to come and talk about game and fish problems. We have a constitutionally established game and fish commission which is almost an independent department of government. A lot of folks were out talking about fox hunting and other things like that, which may or may not be significant in your state. It strikes me that that sort of thing is important, or extremely important in your state, but again, in a state such as yours, and indeed ours, where transportation is not all that convenient, it was important to get the delegates and the commissioners out with the people and to encourage the people to come. We had to do a lot of pushing. That is we had to get on the telephone and get people to come and make presentations.

We made the agenda ourselves to some extent, at all of these county and state sessions. We didn't have trouble getting people, but we tried to present some sort of balance. If there was somebody who was very definite and would speak very strongly on something, we tried to think of who had the opposite point of view. We tried to give an opportunity to have a balanced presentation if at all possible. And, with the convention then, in '70, instead of taking the whole commission as we did, with 30 people you can move out and you won't have quite all 30 people there, but you can get accommodations in your budget as such, particularly if you work with colleges, you can stretch your budget now, and don't have to pay for facilities, and a little travel and some meals and that sort of thing, but in the convention structure, we took the committees to different parts of the state, finance and taxation committee would hold four or five hearings in different corners of the state, and that sort of thing. That was helpful in terms of getting publicity in the local newspapers, and we tried to pick towns that had a TV station if possible, but certainly a good daily newspaper, so that there would be pictures and coverage of the testimony to make the people aware that there was something going on and that their community had had a part in what was going on, which made it look less like the word was coming down from the capitol or the legislature.

414 Van Doren: What about, in both cases, post convention work, as far as getting publicity out and informing the public just what you had done and that type of thing?

418 Gove: We published a message to the people which, as I remember, every voter got a copy of the newspaper which had the new constitution and explanations. There was a campaign committee which was not publicly financed, that pushed the new constitution, and the delegates as individuals campaigned for the convention, in most cases. There were a few who were in opposition. We had our main constitution and four side issues. And the side issues got a lot of attention and there was a campaign committee for merit selection of judges and magistrates, and there was a campaign committee for single member districts vs. our two thirds voting system. We have if you are interested, have you see our series, published by the University of Illinois Press? One of them just came out, regarding campaigning for the new constitution tactics.

444 Van Doren: Is that a new one? I may not have seen that one.

445 Gove: By Joanna Watson, published by the University of Illinois Press. There is another new one, a summary of the whole thing by Elmer Gertson and Joseph Shody, that is just out in hardback, but our activity for the convention process is well documented.

452 Campbell: I would say the basic weakness in the whole process in Arkansas both in the '70 and '80, was in the post convention effort. We went through the things that could be accepted and funded by public funds and in each case, the convention produced and addressed to the people was the text of the constitution followed by explanatory paragraphs, but unfortunately, of course, you don't have much room in something like that to sell something, in many cases you are restricted by simply saying this substantially incorporates the provisions of article so and so, section so and so of the 1874 constitution, which most people didn't know what that said either, in terms of the general public. In other cases, you are reduced to a fairly short summary of what the change is, so that it is, at best, a semi-scholarly explanation in the case of it being understood but not recognized as full; that people don't, for the most part, have a recognition of constitutional issues to begin with, except for the very limited economic issues and, of course, they are concerned about that. So there was no question of anyone who was interested in getting a copy. Ours was distributed this way: Each newspaper in each county was provided a newsprint tabloid and the publication requirements. The statutory requirements was that this was to be provided to each legal newspaper, that is a regularly published newspaper in the state, free of charge, and then they received a payment of something less than the regular legal rate of publication for inserting this stuff, one time, in their newspaper and dis-

tributing it throughout the state, so that everybody who got a newspaper, which was not necessarily every household, and certainly not every voter, but everybody who got a newspaper throughout the state, got a copy of the document, plus the Secretary of the State maintained a file of these and mailed them out to the courthouses and to a number of people on their public officials mailing list, so there was a fairly wide distribution and good deal of publicity. Additional copies could be obtained from the Secretary of the State, and that sort of thing. In 1970, there was no public funding available for any promotion campaign. In 1980 there was some budget allowed for P.R. committee, and there was a P.R. committee composed of delegates, but its purpose was essentially to try to coordinate delegate's speeches and try to coordinate delegate's and try to respond to requests to luncheon clubs and professional groups of one kind or another, trade associations and other things like that, to respond to requests, and in some cases to try to generate requests for talks. There was no money spent on advertising in the sense of TV commercials or newspaper ads. There was a private group formed to solicit money and bought TV time, and some newspaper time. That effort was a little bit better in '80 than it was in '70, but it was not dramatic in the sense of Michigan or maybe in the sense of Illinois, and so forth. There was no really big campaign, and unfortunately, a well drafted constitution is pretty hard to explain. The hardest part in a well drafted constitution is finding somebody

who is willing to give enough money to support the campaign. Some narrow special interest groups may be willing to do it to some extent, but that is one of the hardest things there is, and somebody must have done it right. We have not done it right in Arkansas the past two times.

534 Van Dorer: Well, I think probably we are going to have to stop the meeting. The only other thing, there are other things I would like to touch on and I don't know if we will have a chance to get together or not, but one other thing I would really like to explore. if there is any possible chance to get together. I am going to meet with the people from Texas probably tonight or tomorrow, and go through this same kind of thing. I don't know if you are available, I could have a meeting with the whole committee. Just maybe some ideas on some of the pitfalls to avoid. I know you have explained some of them, and Sam has explained some of them too. We are trying to learn from other people's mistakes, and it is one thing that I think is pretty important about this, although the things that you have given me this morning have really been helpful. I have learned lots just from this morning. But I really think we should probably go. The meeting is supposed to start at 10:30. You might be thinking about that, and if there is a time. One other possibility that Bill Cassella had talked about was maybe getting together tomorrow morning, just at breakfast

rather than like this, and maybe just sit around and talk, and that will give you time to gather your thoughts a little bit, too. If it is possible, let me know. I appreciate the time you two have taken now, and I know this is a busy time, but this was one way to see people that I wasn't able to see in New York other places.

565 Gove: I wish we had a patented formula for success. One of the things we did and I think this may sound egotistical, but we studied our procedures and literature, and we did some good preparatory work.

576 Van Doren: You certainly did. As you said, Illinois is certainly well documented. I think it is probably the . . .

578 Campbell: If the money is available anywhere, that sort of good background material is very helpful, because what happened so often is that you rush in to get a staff, and you wind up picking up people who are anxious to work, but they have no real depth in the area. You can't get those people who got to that area overnight, and they can't get the material together fast enough and you come out with poorly informed answers, I don't mean to say young people don't know anything, that is not what I am trying to say, but to get somebody who knows the issues only from the limited sort of text book source or just a very fragmentated sort of thing. They don't

often get their resources developed and really inform a committee on what the substantive issues are.

599 Van Doren. Well, I think we will finish this off, since we are going to that other meeting.

END OF GOVE/CAMPBELL MEETING.

New York Meeting

November 7, 1980

Present: Guy A. Van Doren,
Administrative Assistant
Constitutional Convention Committee

Frank Gard

New York

Bill Cassella, Executive Director
National Municipal League

George Braden, Attorney General
New York Attorney General's Office

John Bebout (Involved with constitutional
revision for a number of years, and who was
a consultant to the original constitutional
convention in the State of Alaska).
Massachusetts

Van Doren: I feel quite honored to be here before you today. I have read almost all the material that you have written and feel like I know your ideas and know your views on constitutional revision and constitutional subjects and the things that have happened with constitutional conventions in other states. One of the main reasons that I am making this trip is in order for myself and the committee to solicit ideas and basically pick your brains so that if we do have a constitutional convention in the State of Alaska, if the voters approve of it in 1982, we will have a little bit of a head start and we will be able to move the convention along and hopefully have it as successful as the one in 1955. I was asked a question prior to this trip about why we needed to go outside for the information of this type, and my answer was, and I feel it is quite justified, especially after spending quite a bit of time with John last

night, is that it's good to get the point of view of somebody from outside the state. We know what is going on in our state, we live with it all the time, but you people have not only had experience of working with constitutional conventions and what makes a good and successful one, and what makes one that doesn't work. I think getting the perspective of somebody from outside the area will do a lot to help us. I think probably we will just have a sort of an informal format at this meeting. I would like you to express your views and your feelings and each of you kick your ideas around, ask me any questions you want, and we'll see what happens. I will answer questions as best I can, but I'm really not here to have you listen to me talk, I am here to listen to you talk. As you are probably well aware from the correspondence that I had with you, it was at the suggestion of John Bebout and Bill that we are together as a group. I am going to meet some of you people individually, but it was suggested that we get together and kind of kick around some of the subjects that I sent you in that little paper of questions. We are looking for information and help in case that we do have a constitutional convention after 1982 if the people vote on it. We don't know how it is going to go. There are some special interest groups that feel they have not been adequately taken care of by the legislature and feel that the only way they can get some of the changes that they want is through a constitutional convention. There is some pressure mounting in the state by some of these groups to have a convention called and I'm sure they are going to be very active in

the next couple of years. We don't know at this time how the people are going to react. This committee was set up to prepare for a convention in case we are going to have one. Basically, what I am doing, as I was telling John Bebout last night, is kind of retracing a little bit the steps that Tom Stewart took prior to the 1955 convention, going around and meeting the people in the country to get their ideas and views of our constitution and the changes that you people might think are necessary or could improve the constitution, ideas on how to conduct the convention, how to prepare for it and that type of thing. Of course there is a wealth of material that is available now in printed form that wasn't available in 1955, which doesn't necessitate traveling as extensively and meeting with as many people as Judge Stewart did, but the committee felt that it was desirable to meet with you people who are recognized and have been active in revision all of these years.

John Bebout: As I told Guy, one of the main reasons why there is so much material on constitutional conventions is because of the Alaska convention. The whole body of material that the league has put out on constitutional studies as well as the compilation of state constitutional materials was funded by the Columbia Research Fund and the Carnegie Foundation and is the result of the frustration we felt in planning for the Alaska constitutional convention. There was a lack of ready materials which we could easily get at and so we came back

and put together some materials, received a foundation grant and developed the materials which you have been studying. That's how it happened.

It is only fitting that Alaska should now benefit from this material because its convention was responsible for the birth of this idea and the need for this kind of material.

Van Doren: Relating to the materials that I sent to you several months ago, one of the reasons that I sent them out was in order that you familiarize yourself with what has taken place. I included the constitution so you could look at that, and also I believe that Bill Cassella had sent you out that little question sheet, which although informal, was prepared for the committee, of the things that we were going to do. Bill said "Well do you have an idea of what your're looking for", and so I just went ahead and sent those to you so that you would have an idea of some of the things that we are looking into, and I guess with that, we could run down the questions, or I would welcome any comments. It is totally informal, so we can just have at it.

John Bebout: Since we do have limited time, it seems to me that we ought to focus in on what you might describe as a big question first, rather than getting into details on whether we think that the provision on grand juries could be

improved or excised or something of that sort. I guess one question would be, do you need a constitutional convention, and in any case, whether you think you need one or you don't, what kind of preparation ought to be made so as to get a more informed vote as possible in 1982 on the call of the convention. That may be some question of substance, naturally.

Van Doren: Well, I think I'll just let you, if you would like, go ahead and maybe tell me what you think on that subject. I am here to listen to you as far as what you think might be beneficial to Alaska.

John Bebout: Since we didn't talk to the tape recorder at the restaurant last evening, maybe I might just recap briefly what I said on these issues. Number 1, as I just said to George Braden, paraphrasing those remarks, I don't think Alaska needs a constitutional convention at this time, and if I were in Alaska and were voting or were active, I would be trying to educate the public on the proposition that you don't need a convention at this point, but that any improvements that people generally ought to make in the constitution can readily be made, in my judgment, by the amendment process, whereas a convention could well open one of the best state constitutions up to considerable degradation in substance and of character.

George Braden: Let me give an example of the Connecticut constitution. The Connecticut constitution, except for the one man one vote problem, pre one man one vote, there is really nothing wrong with the Connecticut constitution. I mean, I don't quite agree on what I consider minor details, such as an election of the attorney general.

John Bebout: The election of judges by the legislature.

George Braden: No, it's not the election, it's confirmation. The governor appointed, but they had a strange technique because of the gerrymandered house. The house was always Republican and the senate was always Democratic. So they decided that the governor could choose which house, in terms of judicial appointments. This is not in the constitution, I don't think it was in the constitution. I think that it's just the statute must have said that he shall appoint subject to confirmation and it was set up that way so the governor could always get his own appointees confirmed by the same party that he belonged to but otherwise, it was an extremely good constitution. But in 1965, they had a constitutional convention to take care of the redistricting problem because they did have a terribly gerrymandered house of representatives and the senate was subject to 10 year redistricting but nothing ever happened because the two parties always controlled separate houses, whenever it came

up for a vote. So they had a convention and this was the primary reason. The convention, the provision for setting up of the convention was agreed by both parties, strange thing. Parties work together in strange ways, they rigged it so that there would be an even number of delegates, one half of them Republican and one half Democrat. Literally, it was just set up that way. The first thing they did was to adopt the rule of the people that anything done by the convention in the way of changing the constitution had to be approved by a two thirds vote, which was a device to make sure that everything was done and the parties agreed on. One of my very good friends who was a delegate told me that this was the most valuable thing, because it kept all of the special interest nonsense out. There was no way that any special interest groups would prevail. All special interest groups tend to want to use the constitution for what is statutory. There could be an exception or two, according on how you define special interest groups, but that is the general problem. This is one way that you could rig the convention to be sure to protect yourself against that problem, and this is a problem that arises only when you start with a constitution that is pretty good. If you have a lousy constitution that is already filled with all the special interest stuff, there is nothing you can do about it, try to get it out, and you can't use the two thirds vote that way, so.

John Bebout: We had a somewhat similar problem in New Jersey. We had a short constitution. There was nothing, no matter, that was dealt with which was inappropriate for a constitution, so the trouble was that the structure of the government was very badly devised. And as we developed the case for a constitutional convention, we kept harping on the proposition that by the very virtue that the constitution was short that it was very good. We didn't talk in terms of special interest in those days but we do now, but this is partly what we meant. We didn't rig the convention quite the way they did in Connecticut, but there was a bipartisan agreement between the two parties, the leaders of the two parties which achieved a rough division among the delegates. There was a couple of county organizations on both sides that didn't play ball, but certainly it evened out, and incidentally in doing this we were following an 1844 precedent. This kept either party from running away with it, as the republican party had in the legislatively called convention of 1943 or 1944. We produced almost the same constitution that came out of the convention in 1947, but party organization tilted, and people turned it down, where, as apparently, they accepted the 1947 constitution by an overwhelming vote.

Van Doren: In the New Jersey convention, were the delegates selected on partisan or bipartisan?

John Bebout: They were nominated by the party organization.

Frank Gard: Whether you go ahead with anything of this kind, my comments start off with saying that I don't know enough about the Alaska situation to ask the real sharp questions one should ask, but I'll try. It seems to me that anything that moves in the direction of a new constitution ought to consider very carefully what the local situation is and from my own general opinion of the constitution, I would say that although the State of Alaska has some verbals in it here and there, on the whole the Alaska constitution is one of the better constitutions that we see in the United States, and it seems to me that unless there are some specific problems with the constitution that need to be resolved, the constitutional convention is in many respects a very expensive, time consuming and to some extent causes a disturbing event. In other words, it does disrupt the normal political processes. It suffers for a short period of time the nice question of who's doing what. There are certain things that ought not to be handled by the legislature, but there is a question of whether they are properly before the constitutional convention, and there is a kind of interface with many of the people in the constitutional convention and the legislature to change, basically, specific points which are raised in a constitution committee. I would, my general choice is that I don't see that any kind of a setting of this sort would help. Why bother with a convention if you

don't need to. Now, the question arises of course, if there are problems with the present constitution which in some way stops you from doing what you think you ought to do or you have to do, or there are things you cannot do because of constitutional obstacles, well then, you've got to remove those obstacles, but whether one ought to undertake the rather substantial effort, costly, time consuming, energy depleting, of a constitutional convention unless there is a very real need for it, I just plain don't know. I would think that unless there is such a need, you feel, on the political side, you might simply say that you are getting into this at a time when there are substantial changes in the duration of your politics I suppose, and one thing I would be very leary about is to get some of these directions in some way frozen into the constitution. That kind of stuff can best be taken care of by legislation and the temptation to in some way freeze certain political directions of the constitution may become almost irresistible, and so from that point of view, too, unless there is some really compelling reason to go into a constitutional convention, I see no reason on the face of the Alaska constitution to do so. My first question if I were asked to serve as a consultant to the convention, or the commission, or what have you, that's neither here nor there, my first question is what are you trying to accomplish? Where are the present problems in your system that you need to resolve by constitutional convention? The next question would be, supposing there are some problems, obvious, significant, specific, and