offerings with the Department of Commerce and Economic Development, is the best way to implement the policy. I believe that it is more reasonable to require, e.g., the Division of Lands in the Department of Natural Resources, to adopt regulations that would essentially follow the procedure outlined in HB 604, with the single exception that the registration of the offering would be with the Department of Natural Resources, not with the Department of Commerce and Economic Development.

Aside from the comments just expressed, I am pleased that the House Judiciary Committee has sent this important bill on to the House.

Thank you for your consideration of the bill.

Sincerely,

Langhorne A. Motley
Commissioner

cc: Judiciary Committee
Representative Parker

34.55.042 A(6) Repeal

Introduced: 1/16/76
Referred: Community & Regional Affairs and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 604

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the Uniform Land Sales Practices Act."

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

* Section 1. AS 34.55.008 is amended to read:

Sec. 34.55.008. PROHIBITIONS ON DISPOSITIONS OF INTERESTS IN SUBDIVISIONS. Unless the subdivided land or the transaction is exempt by sec. 42 of this chapter

(1) no person may offer or dispose of in this state an interest in subdivided land [LOCATED OUTSIDE THIS STATE] before the time the subdivided land is registered in accordance with this chapter;

(2) no person may dispose of an interest in subdivided land [LOCATED OUTSIDE THIS STATE] unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition.

* Sec. 2. AS 34.55.032 is amended to read:

Sec. 34.55.032. JURISDICTION. A disposition of subdivided land is subject to this chapter and the superior court of this state has jurisdiction in claims or causes of action arising under this chapter if

(1) the subdivider's principal office is located in this state; or

(2) the subdivided land is located in this state; or

(3) [(2)] an offer or disposition of subdivided land is

made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates in this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

* Sec. 3. AS 34.55.042(a)(2) is repealed. — Exempted from Reg if 100 or more lots

* Sec. 4. AS 34.55.044(6) is repealed and re-enacted to read:

(6) "subdivision" and "subdivided land" mean any land, located outside of this state which is divided or proposed to be divided into 10 or more lots, or located in this state which is divided or proposed to be divided into 25 or more lots, whether contiguous or not, for the purpose of first sale or lease as part of a common promotional plan; if subdivided land is offered for sale or lease by a single developer, or a group of developers acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name that land is, without regard to the number of lots covered by each individual offering, presumed to be offered for sale or lease as part of a common promotional plan; all lots created by a person within a five-mile radius from any point of the most recently created lot or lots, within any consecutive five-year period, are presumed to be part of a common promotional plan;

HB

606

...tments to vacancies in the office of United States senator."

COMMITTEE REPORT

1/16/76

HOUSE

Mr. Speaker: Date Feb. 11, 1976

The Committee on JUDICIARY has had HB 606 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

(/) recommends it BE REPLACED WITH CS FOR HB626 AND THAT CS FOR _____ DO PASS ~~as amended~~

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

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February 10, 1976

Mr. Richard Svobodny
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Svobodny:

Pursuant to our telephone conversation of February 5, 1976, I am enclosing herewith a copy of then Superior Court Judge Burke's opinion in Hopson v. Notti, relating to filling U.S. congressional vacancies. The decision was appealed but the appeal was dropped before resolution of it. Please let me know if I can be of further help.

Sincerely,

RICE, HOPPNER & Hedland

John S. Hedland

JSH:mp
Enclosure

Mr. Fleischer

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

EBEN HOPSON, et al.,

Plaintiffs,

vs.

EMIL NOTTI, State Central Committee Chairman of the Democratic Party of the State of Alaska and CLIFFORD E. WARREN, National Committeeman for the Democratic Party of the State of Alaska,

Defendants.

FILED
IN OPEN COURT
Superior Court
State of Alaska
at Anchorage
Date 12-28-72
A. M. VOKACEK Clerk
Deputy

No. 72-3595

OPINION

This is an action for declaratory judgment and injunctive relief.

I. PARTIES.

Plaintiffs are members of the Democratic Party of the State of Alaska, a voluntary, unincorporated organization formed for the purpose of carrying on political activities, including activities designed to effect the election of candidates to political office. Several of their number are delegates to the 1972-1974 State Convention of the Democratic Party.

Defendant EMIL NOTTI is the chairman of the party's State Central Committee. Defendant CLIFFORD E. WARREN is the party's National Committeeman.

II. ACTION TO DATE.

This action was filed on December 5, 1972, after defendant NOTTI announced that he intended to call a meeting of the State Central Committee to nominate a candidate, by committee, for the office of

United States Representative, following the disappearance of Alaska's recently re-elected Representative, the Honorable Nicholas Begich.

On December 7, 1972, this Court entered a preliminary injunction enjoining defendant NOTTI, pending final disposition of the cause, from calling, conducting or participating in any meeting of the State Central Committee for that purpose.

Due to the nature of the controversy and the parties' expressed desire for a prompt decision, the matter was set on for trial commencing December 19, 1972. Allen McGrath appeared for and on behalf of plaintiffs. Hugh W. Fleischer appeared for and on behalf of defendant EMIL NOTTI. Defendant CLIFFORD E. WARREN appeared on his own behalf and without counsel.

Plaintiffs have completed the presentation of their case-in-chief. Defendants have presented evidence upon those issues raised by plaintiffs First and Second Causes of Action, and as to such issues all parties have rested. Defendants have moved for dismissal of plaintiffs' Third Cause of Action, pursuant to Civil Rule 41 (b), reserving the right to present additional evidence in the event that such Motion is denied.

The parties have stipulated that the Court may consider, as evidence introduced at trial, all affidavits, exhibits and testimony presented at the time of hearing on plaintiffs' motion for a preliminary injunction.

III. PLEADINGS.

The complaint alleges three Causes of Action. Plaintiffs' basic contentions are:

> A. That the party's State Central Committee does not have the power to nominate a candidate to run in a special election called to fill a vacancy in the office of United States Representative;
>
> B. That the membership of the State Central Committee fails to comply with the one-man, one-vote principle, thereby violating plaintiffs' equal

protection rights; and

C. That the procedures adopted at the Democratic Party's last statewide convention, whereby delegates from the South Central District were afforded the right to cast only 7/10 of each delegate's vote, were contrary to the bylaws of the Democratic Party of the State of Alaska and violative of plaintiffs' equal protection rights.

Without objection, defendant WARREN was permitted to intervene at the start of trial. By stipulation, the Answer of defendant NOTTI was deemed the Answer of both defendants.

IV. JUSTICIABILITY IN GENERAL.

Historically, courts have been extremely reluctant to take jurisdiction of or interfere in the internal affairs of political parties. King County Republican Central Committee v. Republican State Committee, 484 P.2d 387, 390-391 (Wash. 1971). See also: Annot., 20 A.L.R. 1035 (1922), 169 A.L.R. 1291 (1947). However, the scope of the "political-question" doctrine has been greatly narrowed in the recent years. Maxey v. Washington State Democratic Committee, 319 F.Supp. 673, 677 (D.C. Wash. 1970). See, also: Baker v. Carr, 7 L.Ed.2d 663 (1962); Reynolds v. Sims, 12 L.Ed.2d 506 (1964); Williams v. Rhodes, 21 L.Ed.2d 24 (1968); Powell v. McCormack, 23 L.Ed.2d 491 (1969). It seems clear that where constitutional guarantees are involved the Court can and should exercise its jurisdiction. On the other hand, where the complaint rests upon something less than the violation of a constitutional right, more restraint is called for. Then, it is only when the power to do so is expressly conferred by statute, or the issue involved is regulated by statute and the statute has been violated or misinterpreted, that the courts may properly be called upon and entitled to assume any jurisdiction.

It is with these general principles in mind that the court approaches the task at hand.

V. FIRST CAUSE OF ACTION.

On or about October 14, 1972, the Honorable Nicholas Begich, United States Representative for the State of Alaska, was reported missing on a flight between Anchorage and Juneau, Alaska. Despite extensive search efforts, Representative Begich has not been located and his exact fate remains undetermined.

On November 30, 1972, defendant NOTTI announced that he, as State Central Committee Chairman of the Democratic Party, intended to call a meeting of the State Central Committee for the purpose of nominating, by committee, a party candidate for any special election called to elect a United States Representative for the State of Alaska, when and if a vacancy occurs in the office held by Representative Begich. It was defendant NOTTI'S intention to call such meeting on or about December 14, 15, or 16, 1972. As already noted, such action was enjoined pending final disposition of the cause.

The Court takes judicial notice of the following: on December 11, 1972, the Honorable Dorothy D. Tyner, District Court Judge, impaneled a jury in the District Court at Anchorage, Alaska, to inquire into the facts surrounding the disappearance of Representative Begich; on December 12, 1972, the jury returned its verdict finding that sufficient evidence had been presented to warrant a presumption that Representative Begich is dead; Judge Tyner has not yet entered an Order of Presumptive Death.

The success or failure of plaintiffs' First Cause of Action, aside from their assertion of a deprivation of their right to vote, depends upon the answer to the following question: does the Democratic State Central Committee possess the power to nominate a candidate for the office of United States Representative under the circumstances presented?

Technically, a vacancy has not yet occurred. Defendants argue, therefore, that this action is premature. Although for

different reasons, questions of standing were also before the Court in Maxey v. Washington State Democratic Committee, 319 F.Supp. 673, 677 (D.C. Wash. 1970). There, in language which seems particularly applicable to the case at bar, the Court said:

> There is no question that plaintiffs, who are members and officers of the Washington State Democratic Party and who regularly participate in the election of state and national convention delegates, have a deep personal stake in the outcome of this case. They should not be denied relief because they have brought their action while there is yet time to determine, declare, and implement [the appropriate relief]. The failure by the plaintiffs in Irish v. Democratic-Farmer-Labor Party of Minnesota, 399 F.2d 119 (8 Cir. 1968), to bring their action within a sufficient time to permit meaningful judicial relief was a significant factor in the Court's decision in that case to deny relief. 399 F.2d at 120.

For similar reasons, I hold that plaintiffs have standing to sue and that a case or controversy exists.

On plaintiffs' First Cause of Action I am not persuaded by defendants' claim that there has been a failure to join indispensable parties. I therefore, proceed to dispose of the case on the merits.

Subject to constitutional limitations, the legislature may regulate the nomination of candidates for public office. Briscoe v. Cusper, 435 F.2d 1046 (7th Cir. 1971); Irish v. Democratic-Farmer-Labor Party of Minnesota, 287 F.Supp. 794 (D.C. Minn.), affirmed 399 F.2d 119; Socialist Labor Party v. Rhodes, 290 F.Supp. 983 (D.C. Ohio 1968), affirmed in part, modified in part on other grounds 21 L.Ed 2d 24; Azevedo v. Jordan, 47 Cal. Rptr. 125 (Cal. App. 1965); Kelley v. Adams, 238 So.2d 401 (Fla. 1970); State ex rel.

Socialist Labor Party v. State Election Board, 241 N.E.2d 69 (Ind. 1968); Andrews v. Branigan, 175 N.W.2d 839 (Mich.1970); Cox v. Katz, 293 N.Y.S.2d 829 (N.Y. 1968), affirmed 241 N.E.2d 747, cert. den. 22 L.Ed2d 452; Malinou v. Board of Elections, 271 A.2d 798 (R.I. 1971), appeal dismissed 28 L.Ed2d 527; State ex rel. Brewer v. Wilson, 150 S.E.2d 592 (W.Va. 1966).

By the enactment of AS 15.40.210 the state legislature has established the methods whereby political parties may nominate candidates for the United States House of Representatives, in special elections called to fill a vacancy occurring in the office of United States Representatives. That section provides, in part:

> The nominees of political parties may be selected by the state convention or in any other manner prescribed by the party bylaws * * * .

There is no question that the Democratic Party of the State of Alaska is a "political party" within the meaning of AS 15.40.210.

The "Plan of Organization of the Democratic Party in the State of Alaska" constitutes the bylaws of the state Democratic Party. Such bylaws are silent on the subject in controversy, making no provision for the nomination of party candidates by committee. Plaintiffs contend, therefore, that the State Central Committee is without power to make the nomination. Since the issue before the Court involves an alleged violation or misinterpretation of a state statute, this Court has jurisdiction to determine the question presented by plaintiffs' First Cause of Action.

Unless authorized to do so by statute, by party rule, or by convention, a party committee has no power to make original nominations. Russel v. Tooker, 46 Pac. 530 (Mont. 1896); State ex rel. Copenhaver v. Jack, 153 P.2d 149 (Wyo. 1944); Greenberg v. Cohen, 17 N.Y.S.2d 895 (N.Y. 1940), affirmed 17 N.Y.S.2d 878. When the matter is regulated by statute, the power of a committee to make nominations

is restricted by terms of such statute and the party rules in pursuance thereof. Clary v. Humphrey, 208 N.Y.S. 607 (N.Y. 1925); Nolan ex rel. Rawson v. Place, 20 A.2d 542 (R.I. 1941); McLyman v. Molloy, 162 A. 849 (R.I. 1932); Rook v. Skuse, 262 N.Y.S. 2d 968 (N.Y. 1965); State ex rel. Baker v. Bailey, 163 S.E.2d 873 (W..Va. 1968).

The State Central Committee has interpreted the party's bylaws and applicable statutes as giving it the authority to nominate a candidate. Defendants argue that the Court is bound to follow that interpretation; that the interpretation of a party's bylaws must be left to the party without the interference of the Court. Such argument, while attractive, is without merit, under the particular facts of the case. The meaning of AS 15.40.210 is clear. Since the Democratic Party has failed to prescribe "any other manner" of selection in its bylaws, the only lawful method of nomination is by state convention.

The authority of a political party to interpret its own bylaws cannot be used as an excuse to manufacture, under the guise of "interpretation", that which simply does not exist.

In certain instances, the legislature has specifically authorized nominations by committee. Thus, when a vacancy occurs between the primary and general elections AS 15.25.130 provides:

> The nominees of political parties by party petition may be selected for statewide offices by the party central committee or in any other manner prescribed by the party bylaws * * *. The nominees of political parties by party petition may be selected for district-wide offices by the respective party district committee or in any other manner prescribed by the party bylaws * * *. [Emphasis added]

AS 15.25.056 and 15.40.460 also authorize nominations by committee under certain circumstances.

The differences to be observed in the provisions of AS 15.-

40.210 cannot be attributed to mere accident. I must assume, in the absence of compelling reasons to believe otherwise, that the legislature considered those differences and intended that nominations under AS 15.40.210 were to be by state convention unless the party saw fit to prescribe some other method in its bylaws. To hold otherwise would be to ignore the expressed intent of the legislature.

Finally, defendants seem to argue that unless they prevail on the First Cause of Action it may be difficult or impossible to make a party nomination when and if a special election is called, due to the provisions of the party bylaws concerning the calling of a state convention. Such difficulties do not enable me to ignore the requirements of AS 15.40.210. The difficulties or inabilities complained of, real or imagined, are the product of the Democratic Party's own bylaws.

In the event that the State Central Committee should attempt to nominate a candidate, contrary to the requirements of AS 15.40.210, plaintiffs will suffer immediate and irreparable harm for which there is no adequate remedy at law.

For the foregoing reasons, plaintiffs are entitled to prevail on their First Cause of Action and to the issuance of a permanent injunction.

VI. SECOND CAUSE OF ACTION.

Plaintiffs' Second Cause of Action alleges that the membership of the State Central Committee is not selected so as to reflect compliance with the rule of one-man, one-vote, and that, therefore, any nomination by that committee would be in violation of plaintiffs' right of equal protection. It is conceded that the membership of the committee is not apportioned on a population basis.

Where a committee performs public electoral functions, such as the nomination of candidates for public office, the committee is required to apply the one-man, one-vote principle, since in such cases

it is playing an integral part in the state scheme of public elections. Seergy v. King County Republican County Committee, 459 F.2d 308 (2nd Cir. 1972). See, also: Dahl v. Republican State Committee, 319 F.Supp. 682 (D.C. Wash. 1970); Lynch v. Torquato, 343 F.2d 370 (3rd Cir. 1965); Maxey v. Washington State Democratic Committee, 319 F.Supp. 673 (D.C. Wash. 1970); Rogers v. State Committee of Republican Party, 232 A.2d 852 (N.J. 1967).

Further discussion is unnecessary as the question presented has been rendered moot, by my decision on the First Cause of Action.

VII. THIRD CAUSE OF ACTION.

In their Third Cause of Action plaintiffs allege that at the last state convention, convened on May 26, 1972, without a quorum being present, procedures were adopted whereby delegates from the South Central District were given the right to cast only 7/10 of each delegate's vote; that such procedures were contrary to the bylaws of the Democratic Party of the State of Alaska and in violation of their equal protection rights.

Plaintiffs seek a judgment requiring that the state convention be reconvened; that notice of such reconvened convention be given only to those delegates elected and certified by their respective district conventions; that the voting at such reconvened convention be held in conformity with the party bylaws.

Under the party bylaws, delegates to the state convention are selected at district conventions held for the South East, South Central, Central and North West Districts. The South Central District is comprised of election districts 6 through 12 for the State House of Representatives. Delegates are apportioned on the basis of one delegate for every 250 votes cast in the district for the statewide Democratic nominees receiving the most votes in the preceding election. At the 1972 state convention, the total number of authorized delegate

votes was 199. Of these, 89 were allocated to the South Central District, the largest segment of the group coming from House District 8.

At the South East and South Central District Conventions, a power struggle developed between two opposing groups popularly known as the "Ad Hoc" group and the "Regulars". These individuals were delegates elected to the District Convention by the precinct caucuses.

The South Central District Convention convened on April 7, 1972. Two lists of delegates, for the state convention, were proposed - one by each of the competing groups. A number of names appeared on both lists. Upon a vote of the District Convention the slate proposed by the "Regulars" was elected. The disappointed 'Ad Hoc' group then voted to present their own list of delegates to the State Convention.

At the South East District Convention the opposite occurred. The "Ad Hoc" slate was elected by the convention and the "Regulars" then voted to present their own list of delegates to the State Convention.

The 1972 State Convention was convened at Fairbanks, Alaska, on May 26, 1972. The uncontested delegations from the Central District (46 votes) and the North West District were seated and elected a temporary chairman who appointed a credentials committee. The contested delegations from the South East and South Central Districts were registered separately and were not given delegate badges, due to the challenge to their credentials.

After considering the matter, the credentials committee returned a report recommending that the convention seat those delegates appearing on the "Regulars" slate from South Central and on the "Ad Hoc" slate from the South East District, those being the prevailing slates in their respective district conventions.

A minority report recommended that the competing delegations from each district be seated on a 70-30 ratio. A motion to amend the minority report was then made to seat both slates of delegates from each district, and to give the prevailing slate of delegates .7 vote each, and those from the competing slate .3 votes each.

The party bylaws Provide, in part:

> Each duly elected delegate to the State or District Convention shall be entitled to one vote upon any question coming before the Convention.

This provision was called to the attention of the delegates assembled and proposal was made to "suspend the rules". The only delegates who voted were the 72 uncontested delegates from the Central and North West Districts. By a vote of 68 1/2 to 3 1/2 the amendment was auopted. Thereafter, the members of the competing slates from the South Central and South East Districts participated on a .7 vote - .3 vote basis.

Part of the business of the Convention involved the election of delegates to the 1972 Democratic National Convention. A challenge to certain such delegates was lodged, following the State Convention. The National Committeeman and the National Committeewoman were also challenged. The basis of the challenge was the alleged failure of the State Convention to comply with the requirements of the party bylaws.

A hearing examiner, Hans A. Linde, conducted hearings on the challenge at Anchorage, Alaska, on June 25-26, 1972. His findings and conclusions were submitted to the National credentials committee. He concluded, in part:

> The compromise method of seating and counting delegates adopted by the convention to resolve this issue required

> substantial departures from the State's Party Plan of Organization, and the decision to adopt these departures involved some apparent irregulatities of parliamentary procedure. These were not the kind to cast in doubt whether the action of the action taken was understood by or represented the wish of those voting to adopt them.

The report of the credentials committee to the Democratic National Convention recommended the seating of the delegates elected by the State Convention.

For the purposes of my decision on defendants' motion to dismiss plaintiffs' Third Cause of Action, I must view the evidence as having established a prima facie case of substantial failure to comply with the party's bylaws and the rules of parliamentary procedure adopted by those bylaws regulating the conduct of the State Convention. Civil Rule 41 (b).

My own doubts about the plaintiffs' Third Cause of Action revolve around the justiciability of the questions presented. Unlike the First Cause of Action, there is no st te statute governing the matters of controversy. In the absence of evidence of the violation of a constitutional right, I can see no basis upon which this Court can or should enter into a dispute involving the seating of delegates to the party's state convention. The fact that the convention may have violated its own bylaws and rules of procedure does not, in and of itself, present a justiciable question. The cases cited by the plaintiffs, to the effect that the court should compel compliance with those bylaws, are not persuasive. It must be remembered that political conventions are generally composed of laymen; that the delegates to a convention are often inexperienced people attending their first convention. The evidence in this trial has established beyond question the confusion that naturally attends such a meeting. To require strict or even substantial, compliance with the terms of the party's bylaws

and the rules of order used by the party, would be to invite litigation on every instance of non-compliance. The obvious result would be to destroy the entire process. If the people are to function effectively, through their political parties, they must be permitted to do so free from the strict supervision of the courts. Until such time as the people, through the legislature or their party bylaws, choose to give that authority to the court, the internal problems of conducting a political convention are best left to the parties themselves.

In O'Brien v. Brown, 34 L.Ed2d 1, 6 (1972), the Supreme Court of the United States expressed "grave doubts" as to the action taken by the Court of Appeals in taking jurisdiction of a credentials challenge, saying:

> I has been understood since our National political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates should be seated.
>
> * * *.

The Court further stated:

> In the light of the availability of the convention as a forum to review the recommendation of the Credentials Committee . . . , the lack of precedent to support the extraordinary relief granted by the Court of Appeals and the large public interest in allowing the political processes to function free from judicial supervision, we conclude the judgments of the Court of Appeals must be stayed.

The justiciability question, it seems to me, turns upon whether or not the voters in the South Central District have been deprived of their right to participate in the nomination process. There is no doubt that the nomination of candidates, by convention or committee, is an integral part of the election process is constitutionally protected.

In the instant case, the voters of the South Central District are represented by two slates of delegates which together are authorized to cast all of the votes (89) allocated to that District. Aside from the fact that they have been in competition with one another from the time of their precinct caucuses, there is no evidence that those delegates do not fairly and reasonably represent the people of the South Central District as a whole. If anything, it seems reasonable to assume that they more adequately represent that area, since each group obviously has the support of a large number of voters having different political views.

So long as the procedures adopted at the state convention do not materially deprive the people of the South Central District of their right to participate in the nominating process there is no denial of the constitutional right of equal protection. Here, the representation of all the people making up that district has been broadened rather than narrowed. I am, therefore, unable to conclude that plaintiffs have presented a prima facie case on their alleged denial of a constitutional guarantee.

One extreme example may serve to illustrate the point. Suppose a political party having a similar set of bylaws, because of difficulty in seating delegates, decided to permit all registered party members from a particular district to sit as delegates, sharing the votes allocated to that district. Even if in total violation of the party bylaws, would such a procedure amount to a denial of equal protection? I suggest not.

On the grounds of justiciability, plaintiffs Third Cause of Action must be dismissed.

CONCLUSION

Plaintiffs are entitled to a permanent injunction and declaratory judgment, as prayed for, on their First Cause of Action. The question presented by plaintiffs' Second Cause of Action, being

moot, requires no decision. Plaintiffs' Third Cause of Action shall be dismissed.

Judgment shall be entered in conformity with this opinion. As permitted by Civil Rule 52 (a), the foregoing shall serve as my Findings of Fact and Conclusions of Law.

DATED this 28th day of December, 1972, at Anchorage, Alaska.

Edmond W. Burke

EDMOND W. BURKE
Superior Court Judge

House Judiciary Committee
January 20, 1976

The meeting was called to order by Chairman Gardiner at 1:20. Present were Gardiner, Cotten, Eliason, Parr, Bradley and Specking.

Under discussion was Mr. Miller's HB 606 dealing with appointments to fill vacancies in the U.S. Senators seats. Mr. Miller pointed out that the vacancy should be filled by a person of the same political party as the deceased. Mr. Miller felt that the appointment has to be made by the Governor and has outlined in HB 606 a method by which names should be submitted to the Governor, should the Governor happen to not be of the same party as the deceased. HB 606

Most of the disagreement stemmed from the method of submitting names to the Governor. Be it from the President of the Senate and the Speaker of the House, the Caucuses, the Central Committees, the District Committees or what have you. Only Mr. Specking was in disagreement that the replacement should be of the same party.

The situation of a special election was discussed, and whether an appointment should be made until the next general election, at which time the appointee would have to be duly elected.

Mr. Gardiner suggested that the members meditate on the matter, and a draft proposal be drawn up suggesting methods of submitting names, and it will be researched as to whether in the fact the Governor has to make the appointment, or if a special election will do.

The meeting was adjourned at 2:30.

House Judiciary Committee
January 28, 1976

The meeting was called to order by Chairman Gardiner at 11:05 p.m. Members present were Brown, Cotten, Eliason, Bradley, Parr and Gardiner.

HOUSE BILL NO. 606 Vacancies in U.S. Senate seats HB 606

The basic problem with the bill as it stands and as Mr. Walker was directed to draft a substitute is that the Legislature is not always in session, and by directing nominations through the Legislature, it would require a special session during those times when the Legislature was not in session.

After much discussion it was finally agreed upon that the best step to take was to have the four district conventions as filed with the Lt. Governor as to jurisdiction, each submit no more than 2 names to the Governor so that he has from 1 - 8 names to choose from.

Mr. Walker was instructed to draft a CS based on the above ideas.

The meeting was adjourned at 11:39 p.m.

CSSB 440 SECURITY INTERESTS

CSSB 440

Rick Svobodny explained that this deals with the Uniform Commercial Code. As things stand now automobiles and mobile homes which are covered by certificate of title, do not require the dealer to file liens held by the bank on his inventory until it is sold. This would make it necessary for this information to be available before the article was sold. The filing must be done when the manufacture sells the vehicles to the dealer, not when the dealer sells to the consumer.

Mr. Parr moved that CSSB 440 pass out of committee. No objection, it was done.

HB 606 VACANCIES U.S. SENATORS

HB 606

The members discussed the following amendments to CS HB 606:

Page 1, lines 27 - 29: Delete last sentence of subsection (c).

Page 2, line 6: Delete "not more than".

Mr. Cotten moved that the above amendments be adopted. No objection, so ordered.

Page 2, lines 11 - 17: Change to read:

Sec. 15.40.016. PLAN FILED WITH LIEUTENANT GOVERNOR. Each state party central committee shall maintain on file with the office of the lieutenant governor a plan which defines the "party districts" for the purposes of Sec. 15.40.010 and Sec. 15.40.015.

Mr. Gardiner moved that the above amendment to adopted. No objection, so ordered.

Mr. Parr moved that HB 606 pass out of committee in the form of CS HB 606 with the above amendments included. No objection, so ordered.

The meeting was adjourned at 8:35 p.m.

HB606

1:15

1:20

Gardiner, Cotten, Eliason, Pace, Bradley, Spedding

1:20

① Miller: If Gov appointment need not necessarily be of same party -

If Gov not of same party - Lieut Speaker send names for recommendation, in other words, highest ranking state-level elected officials member of same party shall submit names to Gov. for selection

Speaker & Pres could recommend themself

Spk & Pres should submit at least 2 names therefrom

Miller Pace — Conventions not close enough to People "more representative & closer to grass roots"

By Const. appt. have to come from Gov.

Research what was done in past.

Spedding — Like present system. Quasi would be to replace by persons of same party -

Gray — Same Pres & Spkr might not want to appt. self. Therefore = Caucus.

Eliason — Caucus not allow Pres to leave

Caucus should be replaced by Same Party ??

Caucus = Party Members, not Caucus

Special Election -

too time consuming

Temp appt 2yrs 5mos only.

Appt - then run in next gen'l election

1) Original Statute that was repealed
2)

Central Committee nominate to Caucus= max 5
Party to Caucus - Caucus can nominate from those names or not

Draft proposal for another meeting

2 from Central Comm
2 from Legis Party Members.
or
2 Party Members } to go.
2 Central Comm }

Mediate.

Brown, Cotten, Eliason,
Bradley, Parr, Gardiner

1/28
11:05

HB606

House not always in session ∴ need special session to make nominations

Poll by mail or phone? time certain, for response back?

Dec 72 - Jan 73 Sup. Ct. Case.

Party convention: Eliason - Parr
Party should have input as to who person should be.

Bradley - no problem w/ party input ⇒ convention

Parr - convention turn in list of ≤5 names. Leg. submits ≤3 names to Gov Leg - not caucus

Brown - St. Central Committee. - poll by mail
the previous st. convention. District convention is broad & not regulated by statute. if carefully drafted.

D.C Dist to Leg. caucus - polled

State Party Convention ⇒ x nominees to Gov.
Brown doesn't like St. Conventions - Proxies

Dist. Conv submit @ 3-5 names to Gov. - carefully draft language

C.S. District Regional Arg. Conventions - filed w/ Lt. Gov.
each Conv must submit ≤ 2 names to Gov.
so that Gov gets 1-8 names.

11:38

Original Sponsor: Miller

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 606

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to appointments to vacancies in the office of United States senator."

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

* Section 1. AS 15.40.010 is repealed and re-enacted to read:

Sec. 15.40.010. CONDITIONS AND TIME OF FILLING VACANCY BY APPOINTMENT. (a) When a vacancy occurs in the office of United States senator, a qualified person shall be appointed within 30 days to fill the vacancy unless the remainder of the term of the predecessor in office will expire or the vacancy will be filled by a special election before the senate will next meet, convene or reconvene. The person appointed shall be a member of the same political party as the person who vacated the office. If the person vacating the office was not nominated by a political party any qualified person may be appointed.

(b) If the governor is a member of the same political party as the person who vacated the office, or if the person vacating the office was not elected as a member of a political party, the governor shall appoint a replacement.

(c) If the person who vacated the office was elected as a member of a different political party from that of the governor the governor shall appoint a replacement from the lists submitted to him by the party district committees of the party of the person vacating the office.

* Sec. 2. AS 15.40 is amended by adding new sections to read:

Sec. 15.40.015. PARTY DISTRICT COMMITTEES TO PREPARE LISTS. When a vacancy occurs in the office of United States senator each of the

party district committees of the party to which the person vacating the office was a member, may, within 15 days following the vacancy, submit to the governor a list containing not more than two names it proposes as nominees to fill the vacancy. "Party district committee" means the political party committee that performs the executive function on an intermediate regional basis representating an area larger than the precinct or city and smaller than the state.

Sec. 15.40.016. PLANS FILED WITH LIEUTENANT GOVERNOR. Each party district committee shall, not less than 10 days before the occurrence of a vacancy, file with the office of the lieutenant governor its plans and procedures for developing the list of nominees provided for under sec. 15 of this chapter.

at page 2 line 8

Sec 15.40.016 PLAN FILED WITH LIEUTENANT GOVERNOR.

Each state party central committee shall maintain on file with the office of the Lieutenant Governor the plan of orginization which defines the party district committee. The plan on file with the Lieutenant Governor's office shall govern for the purpose of this chapter. The plan may be revised at any time when certified as correct by each ~~sub-committee~~ sub-central committee and re-filed with the office of the Lieutenant Governor.

AT page 1 line 27 add the following sentence to the sentence ending with the word "office.":

The ~~combined~~ district convention lists of names of nominees, when submitted to the governor, shall when combined, consist of no less than two names of nominess.

Committee

Starting at line 22

. . . two or more nominees, the list to be compiled by

(1) The Central Committee of the political party to which the person who vacated the office was a member, submitting the names of two or more persons to the senators or representatives of the ~~Alaska State~~ Legislature of the State of Alaska, who are of the same political party

(2) The senators and representatives may add to, subtract from, or in any manner alter the list of nominees, before transmitting the list to the governor for his appointment

~~(B)~~ The list shall be transmitted to the governor within 20 days of the occurence of the vacancy

(2) the list shall be transmitted by the Central Committe to the senators and representatives of the Legislature of the State of Alaska within 15 days of the occurrence of the vacancy

To: David Walker

From: House Judiciary Committee

Re: HB 606

The committee would like info on (1) what restrictions the Federal Constitution places on the appointment of senators to complete the term of a senator when a vacancy occurs, and (2) what provisions of the Alaska Constitution are applicable in the filling of a senatoral vacancy.

Please have the attached, proposed committee substitute typed so the committee can take a look at it.

1) What is Fed Constitution restriction 16th Amend

2) What use to be Alaska law before changed in 1967

3) State constitution

① Alternative Central Committee simil names, ~~more than one~~ 2 or more to legislative caucus. The names are not binding Legislative caucus submits name to governor

②

$$7\overline{)3.56} \quad 4\frac{1}{2}$$

28

56

49

22 The list to be formulated by

(1) The Central Committee of the political party to which the ~~Senator or representive belonged~~ person who vacated the office belonged submitting ~~two or more names~~ the names of two or more persons to the elected senators and representitives of the same political party ~~three who may add or subtract names from the list and then forward the list to the governor~~

(2) The Senators and representitives may add, subtract or in any manner alter the list of nominees, before transmitting list, which may not consist of less than two nominees, to the governor for his appointment

(3) ~~I~~ The list shall be transmitted to the governor within 20 days of the

48
7 ⟌ 336
28
56

The
~~This~~ plan on file shall govern for the purposes of this chapter ~~but~~ however the plan may be ~~modified at any time~~ revised and refiled at any time when certified as correct by ~~the~~ each sub-control committee

HB

HB 581 Gov

~~HB 561~~

HB 655 Gov

~~HB~~ SB 440

2-5-76

Definition of Party district Committee is defined at 15.60.010 (23)

Don't change AS 15.60.010 (23) unless prepaid

Headland

Hug. Flasher

Rice, Hopper and Headland

279-5528

Unless by laws provided otherwise vacancy had to be filled by convention when cannadt decd otherwise

Which convention — new one or old on.

Don't wor

District Convention

Plan is organizational plan on file which draws up lines for district list of 2 names

at page 2 line 8

Sec 15.40.016 PLAN FILED WITH LIEUTENANT GOVERNOR.

Each ~~s~~State party central committee shall maintain on file with the office of the Lieutenant Governor the plan of orginization which defines the party district committee. The plan on file with the Lieutenant Governors office shall govern for the purpose of this chapter. The plan may be revised at any time when certified as correct by each ~~sub-committee~~ sub-central committee and re-filed with the office of the Lieutenant Governor.

AT page 1 line 27 add the following sentence to the sentence ending with the word "office.":

The ~~con~~district convention lists of names of nominees, when submitted to the ~~gover~~governor, shall when combined, consist of no less than two names of nominess.

the judicial district to which he was appointed, except in case of assignments and transfers in which case he shall designate the district where he has served the major portion of his term. (§ 7.56 ch 83 SLA 1960)

Sec. 15.35.090. Placing name of superior court judge on ballot. The secretary of state shall place the name of a judge who has properly filed a declaration of candidacy on a separate nonpartisan judicial districtwide ballot for the general election at which approval is sought. (§ 7.57 ch 83 SLA 1960)

Chapter 40. Special Elections and Appointments.

Article
1. United State Senate (§§ 15.40.010—15.40.130)
2. United States House of Representatives (§§ 15.40.140—15.40.220)
3. Governor and Secretary of State (§§ 15.40.230—15.40.310)
4. Legislature (§§ 15.40.320—15.40.470)

Article 1. United States Senate.

Section
10. Conditions and time of filling vacancy by appointment
20. Qualification of appointee
30. Conditions for full, unexpired term appointment
40. Conditions for part-term appointment and special election
50. Date of special election
60. Proclamation of special election
70. Term of elected senator
80. Selection of nominees in manner provided for general election
90. Designation of nominees by petition
100. Requirements of petition for no-party candidates
110. Requirements of petition by political party
120. Selection of political party nominees
130. General provision for conduct of special election

Sec. 15.40.010. Conditions and time of filling vacancy by appointment. When a vacancy occurs in the office of United States senator, the governor, within 30 days, shall appoint a qualified person to fill the vacancy. However, if the remainder of the term of the predecessor in office will expire or if the vacancy will be filled by a special election before the senate will next meet, convene, or reconvene, the governor shall not fill the vacancy. (§ 8.01 ch 83 SLA 1960)

Am. Jur. reference.—18 Am. Jur., Elections, §§ 5, 8, 9, 13, 45, 46.

Sec. 15.40.020. Qualification of appointee. The appointee shall be a member of the same political party as that which nominated the predecessor in office. If the predecessor in office was not nominated by a political party, the governor may appoint any qualified person. (§ 8.02 ch 83 SLA 1960)

Sec. 15.40.030. Conditions for full, unexpired term appointment. If the vacancy is for an unexpired term of two years plus five

full calendar months or less, the appointment shall be for the remainder of the unexpired term. (§ 8.03 ch 83 SLA 1960)

Sec. 15.40.040. Conditions for part-term appointment and special election. If the vacancy is for an unexpired term of more than two years plus five full calendar months, the governor shall call a special election by proclamation and the appointment shall expire on the date the United States senate first meets, convenes, or reconvenes, following the certification of the results of the special election by the secretary of state. (§ 8.04 ch 83 SLA 1960)

Sec. 15.40.050. Date of special election. The special election to fill the vacancy shall be held on the date of the first general election which is held more than three full calendar months after the vacancy occurs. (§ 8.05 ch 83 SLA 1960)

Sec. 15.40.060. Proclamation of special election. The governor shall issue the proclamation calling the special election at least 80 days before the election. (§ 8.06 ch 83 SLA 1960)

Sec. 15.40.070. Term of elected senator. At the special election, a United States senator shall be elected to fill the remainder of the unexpired term. The person elected shall take office on the date the United States senate first meets, convenes, or reconvenes following the certification of the results of the special election by the secretary of state. (§ 8.07 ch 83 SLA 1960)

Sec. 15.40.080. Selection of nominees in manner provided for general election. If the vacancy in the office of the United States senator occurs one calendar month or more before the filing date for the party primary nomination, candidates for the special election shall be nominated in the manner provided for the nomination of candidates for general elections. (§ 8.08 ch 83 SLA 1960)

Sec. 15.40.090. Designation of nominees by petition. If the vacancy occurs less than one calendar month before the filing date for the party primary nomination and more than three calendar months before the next general election, candidates shall be nominated by petition transmitted by actual delivery to the secretary of state before September 2 immediately preceding the special election. (§ 8.09 ch 83 SLA 1960)

Sec. 15.40.100. Requirements of petition for no-party candidates. Petitions for the nomination of candidates not representing a political party shall be signed by at least 1,000 qualified voters, and shall state in substance that which is required in petitions for nomination for general elections provided in AS 15.25.180. (§ 8.10 ch 83 SLA 1960)

Sec. 15.40.110. Requirements of petition by political party. Petitions for the nomination of candidates of political parties shall

state in substance that the political party desires and intends to support the named candidate for the office of United States senator at the special election and requests that the name of the candidate be placed on the ballot. (§ 8.11 ch 83 SLA 1960)

Sec. 15.40.120. Selection of political party nominees. The nominees of political parties to be designated by special petition may be selected by the state convention or by any other manner as prescribed by the party bylaws, and the petition shall be signed by the chairman and secretary of the state convention or, if the nominee is designated by the central committee, the petition shall be signed by the chairman of the central committee or in any other manner prescribed by the party bylaws. (§ 8.12 ch 83 SLA 1960)

Sec. 15.40.130. General provision for conduct of special election. Unless specifically provided otherwise, all provisions regarding the conduct of the general election shall govern the conduct of the special election of United States senators, including, but not limited to, provisions concerning voter qualifications; provisions regarding the duties, powers, rights and obligations of the secretary of state, of other election officials, and of cities and organized boroughs; provision for notification of the election; provision for payment of election expenses; provisions regarding employees being allowed time from work to vote; provisions for the counting, canvassing, and certification of returns; provisions for the determination of the votes and of recounts, contests, and appeal; and provision for absentee voting and the use of voting machines. (§ 8.13 ch 83 SLA 1960)

Article 2. United States House of Representatives.

Sec. 15.40.140. Condition and time of calling special election. When a vacancy occurs in the office of United States representative, the governor shall, by proclamation, call a special election to be held on a date within not less than 60, nor more than 90, days after the date the vacancy occurs. However, if the vacancy occurs on a date that is less than 60 days before, or is on or after the date of the primary nomination in general election years, the governor shall not call a special election. (§ 8.21 ch 83 SLA 1960)

Sec. 15.40.150. Condition for holding special election with primary. If the vacancy occurs on a date within not less than 60, nor

Nicholas J. BEGICH, Appellant,
v.
Will Key JEFFERSON, Appellee.

Nicholas J. BEGICH, Donald E. Young, and George H. Hohman, Appellants,
v.
STATE of Alaska, Appellee.
No. 894.

Supreme Court of Alaska.
May 17, 1968.

Actions for declaratory and injunctive relief. The Superior Court, Third Judicial District, at Anchorage, Edward V. Davis, J., rendered judgments, and appeals were taken. The Supreme Court, Rabinowitz, J., held that constitutional provision that no legislator may hold any other office or position of profit under United States or state prohibited legislators from holding positions as superintendent and teachers in the state operated school district within the unorganized borough.

Affirmed.

1. Officers ⇐30.3

Phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state indicated legislative intention to prohibit legislators from holding any other salaried nontemporary employment under United States or State of Alaska. Const. art. 2, § 5.

See publication Words and Phrases for other judicial constructions and definitions.

2. Officers ⇐30.3

The phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state is not synonymous with "office of profit". Const. art. 2, § 5.

See publication Words and Phrases for other judicial constructions and definitions.

3. Officers ⇐30.3

The term "appointed" in constitutional provision that no legislator may hold any other office or position of profit under United States or state and that during term for which elected and for one year thereafter no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or salary or emoluments of which have been increased, while he was member is sufficiently broad in meaning to encompass hiring of employees, in particular, employment of both school superintendents and teachers. Const. art. 2, § 5.

See publication Words and Phrases for other judicial constructions and definitions.

4. Officers ⇐30.3

The phrase "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state was intended to mean something more than merely an appointive office, as distinguished from an elective office. Const. art. 2, § 5.

5. Officers ⇐30.3

Framers did not intend that "position of profit" in constitutional provision that no legislator may hold any other office or position of profit under United States or state be distinguished from "mere employees" of United States or Alaska. Const. art. 2, § 5.

6. Officers ⇐30.3

Superintendents of state schools and state school teachers hold "positions of profit" within constitutional provision that no legislator may hold any other office or position of profit under United States or state. Const. art. 2, § 5.

See publication Words and Phrases for other judicial constructions and definitions.

7. Officers ⇐30.3

Employment of superintendent and teachers by the state operated school system within the unorganized borough is not employment by political subdivision of State of Alaska; superintendent and teachers are

employees of State of Alaska and occupy positions of profit under State of Alaska within constitutional provision that no legislator may hold any other office or position of profit under United States or State of Alaska. AS 14.12.010; Const. art. 2, § 5; art. 7, § 1; art. 10, § 2; art. 15, § 3.

8. Schools and School Districts ⇐21

The state operated school district is not a political subdivision of the State of Alaska. AS 14.12.010; Const. art. 7, § 1; art. 10, § 2

9. Officers ⇐30.3

Statute providing that employment as a teacher is not holding office or position of profit is violative of constitutional provision that no legislator may hold any other office or position of profit under United States or state. AS 24.05.040; Const. art. 2, § 5.

10. Officers ⇐30

Alaska's constitutional prohibition against members of the three separate branches of state government holding any other positions of profit under State of Alaska reflects intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to exercise by these governmental officials of the executive, judicial, and legislative functions of state government. Const. art. 2, § 5; art. 3, § 6; art. 4, §§ 8, 14; art. 12, § 3.

Joe P. Josephson, of Pollock & Josephson, Anchorage, for appellants.

Will Key Jefferson, pro se

Dorothy Awes Haaland, Asst. Atty. Gen., Anchorage, for appellees.

Before NESBETT, C. J., and DIMOND and RABINOWITZ, JJ.

OPINION

RABINOWITZ, Justice.

The broad question raised by this appeal is whether appellants are prohibited by article II, section 5 of the Alaska constitution from holding positions as school teachers while they serve as members of the Legislature of the State of Alaska. This section of the legislative article of Alaska's constitution provides:

> No legislator may hold any other office or position of profit under the United States or the State. During the term for which elected and for one year thereafter, no legislator may be nominated, elected, or appointed to any other office or position of profit which has been created, or the salary or emoluments of which have been increased, while he was a member. This section shall not prevent any person from seeking or holding the office of governor, secretary of state, or member of Congress. This section shall not apply to employment by or election to a constitutional convention.

In the superior court appellee State of Alaska instituted a declaratory judgment action seeking a ruling that article II, section 5 of the Alaska constitution prohibits a legislator from holding any other position of profit under the State of Alaska "including, but not limited to the positions of teacher, principal or superintendent of a state-operated school."[1] The State of Alaska also sought a determination that AS 24.05.040, a portion of our statutory law relating to the qualifications of legislators, was unconstitutional. This statute, substantially reiterates the text of article II, section 5 of our constitution. An amendment to this section, enacted in 1965,[2] provides:

> An office of profit as used in this section means an elective office on the state or federal levels of government, the holder

1. Throughout the period in question appellant Nicholas J. Begich held, and now holds, the position of superintendent of on-base schools at Fort Richardson, Alaska. During the same period, appellants Donald E. Young and George H. Hohman held, and presently hold, positions as school teachers.

2. SLA 1965, ch. 85, § 1.

of which is entitled to a salary; a position of profit means an appointive position on the state or federal levels of government, the holder of which has the authority to make policy and is entitled to a salary for his services. Employment as a 'teacher' as defined in AS 14.17.250 (12) shall not be considered as holding an office or position of profit.

In addition to the declaratory relief requested as to article II, section 5 of the Alaska constitution, and AS 24.05.040 as amended, the state also sought to enjoin appellants from holding positions of profit while they were members of the Legislature of the State of Alaska.[3]

In granting summary judgment in the separate action instituted by appellee Jefferson against appellant Begich, the superior court decreed that article II, section 5 of the Alaska constitution was unambiguous, that the position of superintendent of on-base schools at Fort Richardson, Alaska, held by appellant Begich, was a position of profit under the State of Alaska within the intendment of article II, section 5 of the Alaska constitution, that such "dual office holding" by appellant Begich was in direct violation of article II, section 5, that AS 24.05.040 is unconstitutional and void,[4] and that appellant Begich should be enjoined from acting as superintendent of on-base schools of the State of Alaska during any period he holds office as a member of the Legislature of the State of Alaska. In awarding summary judgment to appellee State of Alaska in its separate declaratory judgment action against appellants, the superior court specifically decreed that:

> [T]he positions of teacher, principal, or superintendent in a State operated school constitute positions of profit under Article II, § 5 of the Constitution of the State of Alaska, which provides that no legislator may hold any other office or position of profit under the United States or the State.

The order granting summary judgment also decreed that the 1965 amendment to AS 24.05.040 was inconsistent with article II, section 5 of the constitution of Alaska, and thus unconstitutional. It was further decreed that appellants "Begich, Young and Hohman are enjoined from holding their respective positions as teachers, or as school superintendent, while they are members of the legislature of the State of Alaska." [5]

[1] The focus of our initial inquiry is upon the meaning of the phrase "position of profit" as used in article II, section 5 of the Alaska constitution. As originally proposed by the Committee on the Legislative Branch at the Alaska Constitutional Convention, section 5 read:

> No member of the legislature shall hold any other office which has been created, or the salary or emoluments of which have been increased while he was a member of the legislature, during the term for which he was elected and for one year after the expiration of such term. No legislator or other elective or appointive officer of this state shall file

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3. In a separate suit which was consolidated with the state's action, appellee Will Kay Jefferson sued appellant Nicholas J. Begich and in part sought to enjoin appellant Begich from holding the position of superintendent of on-base schools at Fort Richardson, Alaska.

4. In the summary judgment which was entered, it was specifically stated:
> That Chapter 85, Session Laws of Alaska, 1965, codified as part of Alaska Statutes 24.05.040, is contrary to the specific prohibition of the Constitution of the State of Alaska insofar as it provides that:
> 'Employment as a "teacher" as defined in A.S. 14.17.250(12) shall not be considered as holding an office or position of profit.'
> And, for that reason, is unconstitutional and void.

5. In both cases the superior court stayed the effect of its decrees pending appellate review.

or run for election to any other state office until his services have been terminated, but a member of one house of the legislature may be nominated and elected to the other house. This section shall not apply to positions of employment in or elections to any constitutional convention.[6]

When the Committee on the Legislative Branch first introduced its Committee Proposal No. 5 at the constitutional convention (section 5 of this proposal being the forerunner of article II, section 5), the committee also made of record its commentary concerning this proposal. In this document, it was stated in part that:

> It is generally agreed that the temptation to create jobs or to increase the salary in existing jobs which legislators would then accept ought to be removed.[7]

During the January 25, 1956, proceedings of the Alaska Constitutional Convention, Mr. Steve McCutcheon, chairman of the Committee on the Legislative Branch, submitted an amendment to the then proposed sections. The amendment offered an addition to section 5 which read as follows: "No legislator may hold any other office or position of profit under the United States or the State."[8] At the time this amendment was introduced, Mr. McCutcheon made the following statement:

> Mr. President, I will say, before objection is made, that it was the intent of the Legislature Committee that there should be no dual office holding from the standpoint of a legislator, and it was drawn to our attention that our article, Section 5 at least in the article, wasn't entirely clear that dual office holding was prohibited. So this terminology has been offered in order to clarify and fortify that point.

It is apparent from the foregoing that any allusions at the constitutional convention to the meaning of the phrase "position of profit" were of a rather sketchy and inconclusive character. To further illumine the task of construing this language, we turn to other portions of our constitution in which "position of profit" has been employed. In article III, section 6, which deals with the executive branch of Alaska's government, it is provided that:

> The governor shall not hold any other office or position of profit under the United States, the State, or its political subdivisions.

In article IV of the Alaska constitution, the term "position of profit" is employed in two sections. In regard to the judicial council, which body is created by this article, section 8, provides in part that:

> No member of the judicial council, except the chief justice, may hold any other office or position of profit under the United States or the State.

Concerning the justices of this court, and superior court judges, article IV, section 14 provides in part:

> Supreme court justices and superior court judges while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the State, or its political subdivisions.

Also of importance is section 3 of article XII of Alaska's constitution. This article, entitled General Provisions, states in regard to "position of profit":

> Service in the armed forces of the United States or the State is not an office

6. 6 Proceedings of the Alaska Constitutional Convention, Appendix V, Committee Proposals and Commentary at 30.

7. The text of this same committee commentary then reads:
> There have been instances in which legislators have virtually coerced governors into appointing them to state offices as the price for their action on the governor's program; such deals would be prevented by requiring a year to elapse before eligibility. This section, furthermore, would prevent any state official from using his office or expense account as a vehicle for campaigning for another office.

8. 4 Proceedings of the Alaska Constitutional Convention (Jan. 25, 1956), at 3095.

or position of profit as the term is used in this constitution.

The foregoing provisions of Alaska's constitution shed considerable light upon the intended meaning of the phrase "position of profit." We have concluded that the trial court correctly determined that the provisions of article II, section 5 of the Alaska constitution are unambiguous. Upon a reading of the constitution as a whole, we deem it of paramount significance that the phrase "position of profit," in addition to restricting members of the legislature, has also been employed as a restriction upon members of the judicial council, justices of this court, superior court judges, and the chief executive officer of the State of Alaska. Use of the term "position of profit" in these articles of Alaska's constitution illuminates the reach the framers of our constitution intended to impart to this term in article II, section 5. This usage, considered with the fact that the constitution itself provides only two exceptions to the scope of "position of profit," namely, article II, section 5's proviso that the section itself be inapplicable "to employment by or election to a constitutional convention,"[9] and article XII, section 3's provision that "service in the armed forces of the United States or of the State is not an office or position of profit as the term is used in this constitution," indicates to us that the framers intended to prohibit members of the legislature, judiciary, judicial council, and the state's chief executive officer from holding any other salaried nontemporary employment under the United States or the State of Alaska.

[2, 3] In reaching this conclusion, we reject appellants' primary contention that the phrase "position of profit" is synonymous with "office of profit," and that the only distinction between the two is that the former applies to appointive, as opposed to elective, offices or positions under the United States or the State of Alaska.[10]

9. In AS 22.05.130 of our statutes relating to the Supreme Court of Alaska, it is provided that:

> A supreme court justice while holding office may not practice law, hold office in a political party, or hold any other office or position of profit under the United States, the state, or its political subdivisions. A supreme court justice filing for another elective public office forfeits his judicial position.

By virtue of AS 22.10.180 the same restrictions were imposed upon superior court judges. In regard to our district judges, AS 22.15.210(a) establishes that:

> A district magistrate, while holding office, may not practice law, except before a federal district court or federal agency and if the practice does not interfere with the performance of his official duties as magistrate. Except as provided in this section, a district magistrate may not engage in the conduct of any other profession, vocation or business for profit or compensation, hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions, except that the district magistrate may be appointed deputy clerk of the superior court and may hold the office of United States commissioner. A district magistrate who files for an elective public office forfeits his judicial position.

As to deputy magistrates, the legislature, in AS 22.15.210(b), provides that:

> A deputy magistrate, while holding office, may not hold office in a political party. He may hold any other office or position of profit under the United States, the state or its political subdivisions, or engage in the conduct of any profession or business which does not interfere with the performance of his judicial duties or require that he repeatedly disqualify himself from judicial service because of a conflict of interest caused thereby.

10. As previously indicated, art. III, § 6 prohibits the governor from holding any position of profit under the United States, the state, or its political subdivisions. Section 14 of art. IV calls for the same prohibition (i. e., political subdivisions). No reference is made to political subdivisions in art. II, § 5.

Cf. Webster's Third New International Dictionary (2d ed. 1961) in which "position" is defined in part as "office, employment, vocation" and as "the group of tasks and responsibilities making up the duties of an employee."

Appellants cite authority to the effect that before any public employment can

As part of this argument appellants contend that the phrase "position of profit" is modified, and consequently narrowed, by the second sentence of article II, section 5 in which the terms "nominated," "elected," or "appointed" are "clearly intended exhaustively to catalogue the routes by which one can attain an 'office or position of profit.'" In our view the term "appointed," as used in article II, section 5, is sufficiently broad in meaning to encompass the hiring of employees, in particular, the employment of both school superintendents and teachers. We reach this conclusion based upon judicial precedent[11] concerning the meaning of "appoint" and the sense in which the word has been used in Alaska's statutes pertaining to education.[12] This treatment is reflected in AS 14.20.207(2) of our education laws which defines "employer" in the following manner:

> '[E]mployer' means the school board or superintendent which appoints the teacher or, in the case of a teacher in the state-operated schools, the department * * *.

Additionally, AS 14.14.130(c) establishes that the superintendent of schools "shall select, appoint, and otherwise control all school employees and administrative officers serving under him subject to the approval of the school board." In light of judicial precedent holding that "appointment" is synonymous with "employment," and in view of our legislature's use of "appointment" as a synonym for "employment" in our education laws, we reject appellants' argument that the use of "appointed" in the second sentence of article II, section 5 necessitates the conclusion that teachers are outside the ambit of article II, section 5's restrictions. In short, we hold that teachers are "appointed," as that term is commonly and ordinarily understood, to positions within our educational system.

[4–6] This holding necessitates return to appellants' initial contention that teachers do not hold positions of profit in the sense intended by the framers when they incorporated that phrase into the text of article II, section 5. We have already alluded to our belief that "position of profit" was intended to mean something more than merely an appointive office, as distinguished from an elective office. Analyzing the textual use of "position of profit" in the legislative, judicial, executive and general provisions articles of our constitution, we conclude that the term was intended to prohibit all other salaried non-temporary employment under the United States or the State of Alaska.[13] In reaching this conclusion

be deemed to be a public office, the job must be one created by law; the job must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public; the powers and duties pertaining to the job must be defined directly or impliedly by the legislature or through legislative authority; the duties must be performed independently and without control of a superior power, other than the law, unless they are of a subordinate office created or authorized by the legislature, in which case the job must be placed by the legislature under the general control of a superior office or body; and the job must have some permanency and continuity and not be temporary or occasional in nature. See Farley v. Board of Educ. etc., 62 Okl. 181, 162 P. 707 (1917).

11. In Morris v. Parks, 145 Or. 481, 28 P. 2d 215, 216 (1934), the court said that, "The terms 'employ' or 'hire' are equivalent to 'appoint,'" citing Burnap v. United States, 252 U.S. 512, 40 S.Ct. 374, 64 L.Ed. 692 (1920); United States v. Butler, 49 F.2d 52, 54 (5th Cir. 1931); Gracey v. City of St. Louis, 213 Mo. 384, 111 S.W. 1159 (1908). See O'Brien v. Hughes, 270 App.Div. 1072, 63 N.Y.S.2d 780, 781 (1946); Guiliano v. Thomas, 36 Misc.2d 338, 232 N.Y.S.2d 328, 329 (Sup. Ct.1962).

12. AS 14.20.207 defines "teacher" as "a person serving in a teaching, counseling, or administrative capacity and required to be certificated in order to hold the position."

13. We again emphasize that art. II, § 5 itself provided that it was inapplicable "to employment by or election to a constitutional convention." The only other exception specified in the constitution is found in art. XII where it is established that service in the armed forces of the United States or the State of Alaska is not an office or position of profit as that term is used in this constitution.

ing this conclusion, we have in essence declined to follow two additional lines of argument which have been advanced by appellants. First, appellants argue that the constitution must be read as a whole and when read in this manner it is evident that the framers intended to distinguish "position of profit," or holders of positions of profit, from "mere employees" of the State of Alaska or the United States of America. Appellants ground this argument in part upon the provisions of sections 6 and 7 of article XII of Alaska's constitution.[14] Appellants' position here is that the framers used "employment" and "employee" in these sections and thus consciously distinguished between "employment" and "position of profit" as used in article II, section 5. As we have indicated, we draw a contrary conclusion from a reading of the constitution as a whole. The use of the term "position of profit" as a restriction pertaining to all three branches of government, and the limited exceptions to the scope of this restriction provided for in our constitution, leads us to the conclusion that the use of "employment" and "employee" in sections 6 and 7 of article XII is not determinative of the meaning of "position of profit." Our study has convinced us that the framers' choice of "position of profit" in the various sections of the constitution to which we have referred reflects their intent to adopt a term which was broad in scope. This same analysis results in the conclusion that the phrase "position of profit" was intended to bar members of the legislature, justices of this court, superior court judges, members of the judicial council, and the governor of the State of Alaska from concurrently holding any other salaried, non-temporary employment under the State of Alaska. In brief, we hold that superintendents of state schools and state school teachers hold positions of profit within the prohibition of article II, section 5 of Alaska's constitution.[15]

Appellants next argue that regardless of what interpretation of "position of profit" is adopted by this court, if appellants' positions as school superintendent and teachers are not held under the State of Alaska but rather, under one of the state's political subdivisions, then such positions are not incompatible with article II, section 5. Appellants base this argument upon a comparison of the text of article II, section 5 with other sections of the Alaska constitution in which reference is made to the state or its political subdivisions.[16] Appellants maintain that all school personnel associated with schools of the unorganized borough, as appellants are, are employees of "a political subdivision" of the state and not of the state itself. Appellee State of Alaska's position is that appellants hold positions within the state-operated school district, that this school district is not a political subdivision of the state, and that

443

14. Art. XII, § 6 provides: "The legislature shall establish a system under which the merit principle will govern the employment of persons by the State."
See. 7 of art. XII provides:
> Membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship. Accrued benefits of these systems shall not be diminished or impaired.

Appellants do not make any reference to art. VI, § 8 of the Alaska constitution regarding legislative apportionment and the composition of our reapportionment board. This section provides in part that the reapportionment board shall "consist of five members, none of whom may be public employees or officials."

15. Precedent from other jurisdictions reveal that the word "position" is often given a meaning which embraces both officers and employees. Brown v. Boyd, 33 Cal.App.2d 416, 91 P.2d 926, 930 (1939); State ex rel. Baldwin v. Strain, 152 Neb. 703, 42 N.W.2d 706, 801 (1950); Mylod v. Graves, 249 App.Div. 455, 293 N.Y.S. 430, 432 (1937); People ex rel. Earl v. England, 10 App.Div. 97, 45 N.Y.S. 12, 13 (1897). It is sometimes said that a "position" is an employment in which duties involved are continuous and certain.

16. See art. III, § 6 and art. IV, § 14 where the prohibition against holding positions of profit extends to such positions under political subdivisions of the state.

employment by the state-operated school district is nothing less than employment by the State of Alaska.

[7-9] We reach the conclusion that the employment of appellants by the state-operated school system within the unorganized borough is not employment by a political subdivision of the State of Alaska. Article VII, section 1 of the constitution of the State of Alaska provides in part that:

> The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.[17]

Pursuant to this constitutional authorization, the legislature enacted title 14 (education code). In establishing the districts of the state's public school system, AS 14.12.010(3) provides that

> the area outside organized boroughs and outside first, second, and third class cities is the state-operated school district.[18]

In regard to this state-operated school district, the legislature vested management and control of its operations in the state Department of Education.[19] It was further provided that the Department of Education was to furnish the "state money necessary to maintain and operate the state-operated school district."[20] In the definition section of our education laws, the legislature defined the word "employer" in the state-operated schools as meaning the Department of Education.[21] We think it apparent from the foregoing that school superintendents and teachers employed in the state-operated school district are employees of the State of Alaska. We further hold that the state-operated school district is not a political subdivision of the State of Alaska.[22] We, therefore, hold that appellants occupy positions of profit under the State of Alaska. Further, since the 1965 amendment to AS 24.05.010 is in conflict with article II, section 5 of Alaska's constitution, we affirm the superior court's

17. Secs. 4 and 5 of art. VII further provide that the legislature shall provide for the "promotion and protection of public health" and provide for "public welfare."

18. AS 14.12.010 further provides that:
(1) each first, second, and third class city in the unorganized borough is a city school district;
(2) each organized borough is a borough school district.

19. AS 14.07.010 established the Department of Education which includes "the commissioner of education, the state Board of Education, and the staff necessary to carry out the functions of the department."

20. AS 14.12.020 provides that:
Support, management, and control. (a) Operation of the state-operated school district is under the management and control of the department.
(b) Each borough or city school district shall be operated on a district-wide basis under the management and control of a school board.
(c) The department shall provide the state money necessary to maintain and operate the state-operated school district. The borough assembly for a borough school district, and the city council for a city school district, shall provide the money which must be raised from local sources to maintain and operate the district.

21. AS 14.20.207(2).

22. Art. X, § 2 of the Alaska constitution provides that all local government powers shall be vested in boroughs and cities. See Walters v. Cease, 391 P.2d 670 (Alaska 1964). Art. XV, § 3 of our constitution further provides:
Local Government. Cities, school districts, health districts, public utility districts, and other local subdivisions of government existing on the effective date of this constitution shall continue to exercise their powers and functions under existing law, pending enactment of legislation to carry out the provisions of this constitution. New local subdivisions of government shall be created only in accordance with this constitution.
On the basis of the foregoing, appellee State of Alaska argues that the intent of the constitutional convention was to create only two political subdivisions.

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23. We agree with
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determination of the unconstitutionality of the 1965 amendment.[23]

[10] Alaska's constitutional prohibition against members of our three separate branches of state government holding any other positions of profit under the State of Alaska reflects the intent to guard against conflicts of interest, self-aggrandizement, concentration of power, and dilution of separation of powers in regard to the exercise by these governmental officials of the executive, judicial, and legislative functions of our state government. The rationale underlying such prohibitions can be attributed to the desire to encourage and preserve independence and integrity of action and decision on the part of individual members of our state government. On the other hand, we recognize that citizens should be interested in and seek public office. Public service and concern for the welfare of our citizenry is essential if we are to have a viable state government. By today's decision we have not ruled upon the question of whether article II, section 5's prohibition precludes legislators from holding teaching positions under political subdivisions of the State of Alaska.

The superior court's summary and declaratory judgments are affirmed

23. We agree with appellants' contention that if "position of profit," as used in Alaska's constitution, were ambiguous, this court would be bound to honor a reasonable construction of that phrase by the legislature.

Bay v Jefferson
Sup Ct 481 File 894
441 P2d 27 (1968)
Dec Jan
Baggech Case 1972 or 73

Whether there had to be a convention. Talk to Chaney

District convention ~~1 to 3~~ not more than 2 Submit names
By each district organization

Conventions of each party plan each party plank has to be filed with Lt Gov.

District conventions

The 4 districts will have conventions where not more that two names will be named and submitted to Gov. who will chose from that list.

HB
631

House Judiciary Committee
February 20, 1976

The meeting was called to order by Chairman Gardiner at 1:20 p.m. Members present were Brown, Eliason, Parr, Gardiner, Cotten and Bradley.

HB 631 COMMUNICATIONS CARRIER/PUC

HB 631

Mr. Brown stated that this was advocating the lowest possible rates, and was considered a priority by the subcommittee on telecommunications.

Mr. Brown moved HB 631 out of committee with a further referral to Finance. No objection, it was so ordered.

HB 633 REGULATION OF PUBLIC UTILITY RATES

HB 633

Companion bill to HB 631. Mr. Brown moved HB 633 out of committee to wait in Rules for HB 631 to come from Finance. There being no objection, it was so ordered.

HB 574 MEDICAL MALPRACTICE

HB 574

Amendment by Anne after slight modifications by Committee:

ARTICLE 3. LOAN FUND.

Sec. 21.88.110. FUND ESTABLISHED. (a) There is in the Department of Commerce and Economic Development a medical malpractice liability revolving loan fund to be administered by the director of insurance.

(b) Loans from the fund shall be made to the corporation upon certification by the Director of the Division of Insurance that the loan is necessary for the corporation to maintain adequate reserves or for initial costs of operation. If a loan is made to the corporation from the fund, the corporation shall issue a note to the fund pledging the premiums collected in the future as security for the loan.

(c) Loans from the fund shall be repaid by the corporation within four years at an annual interest rate of seven per cent.

(d) The director may sell or transfer at par value to the Department of Revenue the notes held by the Department of Commerce and Economic Development as security for loans made under this section. The Department of Revenue shall purchase all the notes offered until the current principal amount of notes purchased and held by the Department of Revenue equals $5,000,000.

Mr. Brown moved that the above amendment be adopted. There being no objection, it was adopted.

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

TO: APUC DATE: 1/20/76

(SENATE - HOUSE) BILL 631
SB 561

RE: Providing for a communications carriers section for the APUC

Check One:

1. TOP PRIORITY - in favor of ____
2. FAVOR - in favor of, but not top priority X
3. OK - no definite stand ____
4. NOT IN FAVOR ____
5. TOP PRIORITY - "Strongly Opposed" ____
6. BILL DOES NOT PERTAIN TO DIVISION ____
7. Bill does not directly pertain to division, but I am interested in its progress. Keep me informed. ____

COMMENTS: (Justification must be stated for #1 - #6 above. Continue on another page if needed).

I am in favor of this bill which will hopefully relieve a portion of the burden that is presently being borne by the Alaska Public Utilities Commission staff.

A minor housekeeping item which probably has been corrected by now is the mislabeling of the statute as AS 42.07 when I believe the author meant AS 42.05.

Ancother correction might be advisable in proposed section 42.05.123(a). In this section communications common carriers would be limited to the use of wire, cable, radio and space satellites. In a progressive state such as ours I do not think that the carrier should be restricted by statutes to only those modes of communications in view of

(SEE ATTACHED PAGE 2)

RECEIVED
A.P.U.C.
JAN 23 11 35 AM '76

Writer's Signature: [signature]
Writer's Title: Chairman, APUC
(DEADLINE 24 hours)

(Note: Please return to Information Officer/Leg Asst., Office of the Commissioner)

the technological advancements in waveguides, lasers, fiber-optics, etc. I would suggest that the last sentence of 42.05.123(a) end with the words, "involving the use of telecommunications." The definition of telecommunications as set forth in AS 42.05.701(8) states:

> "'telecommunications' means the transmission and receiption of messages, impressions, pictures and signals by means of electricity, electromagnetic waves and any other kind of energy, force variations or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points."

This definition might be appropriate for this bill.

TO: APUC DATE: 1/20/76

(SENATE - HOUSE) BILL 631 & SB561

RE: Providing for a communications carriers section in the APUC

Check One:

1. TOP PRIORITY - in favor of. V
2. FAVOR - in favor of, but not top priority.
3. OK - no definite stand.
4. NOT IN FAVOR -
5. TOP PRIORITY - "Strongly Opposed"
6. BILL DOES NOT PERTAIN TO DIVISION

COMMENTS: (Justification must be stated for the above line checked - Continue on another page if needed.)

I am strongly in favor of HB 631.

The past and current operational profile of this Commission is one of reaction --- reaction to utility requests for rate relief and reaction to consumer complaints with regard to quality of service. A dedicated strike force within the APUC would take the burden of rates and quality of service to the utility and would provide the vehicle for continuous monitoring by the Commission of their operation. It would be difficult to place an exact dollar saving to the rate payer of Alaska but I would envision a very substantial amount.

This bill would substantially impact the APUC budget in the categories of personnel, equipment and travel.

Writer's Signature: Warren C. Platt

Writer's Title: APUC Commissioner

DEADLINE 24 hours)

HB
632

HB 632 & SB 559

I am not in favor of HB 632 in its present form.

There is a very serious hazard in limiting this Commission to the review and approval of technical systems and signal quality for the low density communities to be served under this bill. The APUC could direct a community to meet Bell System telephone standards and this in turn could place undue and prohibitive burden upon the rate payers of the served communities. If the APUC is tasked with the responsibility of technical performance then the APUC must also have the ability to adjust and to prescribe rates.

This bill will also impact the APUC budget in the area of personnel and equipment.

Marvin R. Weatherly
Commissioner
Public Utilities Commission

Rural Electrification Association Utility Cooperatives

Regulated by Alaska Public Utilities Commission

Rate of Return on Rate Base/1

1974

	1974 Income	Proforma Year End 1974 Rate Base	Return on Rate Base
Alaska Village Electric Cooperative, Inc.	288,119	8,433,975	.0342
Barrow Utilities and Electric Cooperative, Inc.	2,251	569,525	.0040
Bristol Bay Telephone Communications Cooperative, Inc.	1,077	32,267	.0334
Chugach Electric Association, Inc.	1,181,741	82,132,634	.0144
Copper Valley Electric Association, Inc./2	-	-	-
Copper Valley Telephone Cooperative Incorporated	142,832	1,533,323	.0932
Glacier Highway Electric Association, Inc.	(5,138)	1,211,013	(.0042)
Golden Valley Electric Association, Inc.	1,457,051	41,153,959	.0354
Homer Electric Association, Inc.	667,571	17,078,564	.0391
Kodiak Electric Association, Inc.	(157,928)	4,362,802	.0362
Kotzebue Electric Association, Inc.	(1,299)	1,606,564	(.0008)
Matanuska Electric Association, Inc.	345,941	14,713,825	.0235
Matanuska Telephone Association, Incorporated	169,605	6,264,524	.0271
Naknek Electric Association, Inc.	(39,462)	849,745	(.0464)
Nushagak Electric Cooperative, Inc.	26,059	1,076,903	.0242
Nushagak Telephon Cooperative, Inc./3			
OTZ Telephone Cooperative, Inc./3	-	-	-
Composite Total	4,078,420	181,019,623	.0225

/1 Rate Base Computed as:
Additions:
Net Plant
Materials and Supplies
Pre-Payments
Cash Working Capital Allowance of 12.5% Cash Operating Expense
Deductions:
Customer Deposits
Customer Advances for Construction
Contributions in Aid of Construction

/2 Data as filed is not usable.

/3 Recently organized and not in operation during 1974.

HB
633

"An Act relating to the regulation of public utility rates."

COMMITTEE REPORT

1/20/76

HOUSE

Mr. Speaker: Date Feb. 20, 1976

The Committee on Judiciary has had HB 633 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Tony Gardner - Do Pass

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Tony Gardner Chairman

1-1-

TO: APUC DATE: 1/20/76

(~~SENATE~~ - HOUSE) BILL 633 & SB 560

RE: Regulation of public utility rates.

Check One:

1. TOP PRIORITY - in favor of. ____
2. FAVOR - in favor of, but not top priority. ____
3. OK - no definite stand. X
4. NOT IN FAVOR - ____
5. TOP PRIORITY - "Strongly Opposed" ____
6. BILL DOES NOT PERTAIN TO DIVISION ____

COMMENTS: (Justification must be stated for the above line checked - Continue on another page if needed.)

The Alaska Public Utilities Commission has always felt that they had the responsibility of keeping rates at the lowest level which would allow a reasonable rate of return to the utility. The question of reasonable rate of return has been the subject of much study by commissions, public utilities, courts and the public. A reasonable rate of return is tied, of course, to the return that a prudent investor could gain in the market place. The Alaska Public Utilities Commission has had considerable input in the form of expert witness testimony on the proper rate of return. I personally would have no quarrel with this addition to the statutes since I feel it is one of the primary duties of this Commission.

I would respectfully call to the attention of the author the situation that exists with respect to several electrical utilities in the state who are probably earning less than a reasonable rate of return as determined by the market place. I am referring

(SEE ATTACHED PAGE 2)

Writer's Signature: [signature]
Writer's Title: Chairman, APUC
(DEADLINE 24 hours)

specifically to several of the REA cooperatives whose returns are in the neighborhood of 2% to 3%.

For the information of the reviewing committees I am attaching a one-page report on rates of return enjoyed by several REA cooperatives in the state.

Introduced: 1/20/76
Referred: Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL SUB-COMMITTEE ON TELECOMMUNICATIONS

HOUSE BILL NO. 633

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the regulation of public utility rates."

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

* Section 1. AS 42.05.381 is amended by adding a new subsection to read:

(c) In the investigation and review of existing, new or revised rates or tariffs, the commission shall determine and establish the rates or tariffs at the lowest level which would still allow a reasonable rate of return to the utility.

#

HB
634

"An Act relating to the employment of minors."

COMMITTEE REPORT

2/6/76

HOUSE

Mr. Speaker: Date April 6, 1976

The Committee on JUDICIARY has had HB 634 under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR HB 634 AND THAT CS FOR HB 634 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____ COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

file 634

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER / BOX 1149 – JUNEAU 99811

April 16, 1976

Representative Terry Gardiner
Chairman, Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Gardiner:

I have recently completed a review of the committee substitute for House Bill No. 634 and have determined that its affect on the Department of Labor would be as follows:

1. In order for minors under the age of 18 to go to work they would need only to notify the Department in writing (*Sec. 3) rather than seeking to determine from the Department if the work is in a permissible occupation.

2. Between *Sections 4 and 5, the Department's jurisdiction in granting exemptions would be further limited in that exemptions may only be granted to 16 year olds in potentially dangerous occupations or for long hours and to 16 - 18 year olds seeking employment in restaurants on licensed premises.

3. With the exception of No. 2, above, the bill would remove Child Labor from State control, thus invoking Federal jurisdiction.

Since this bill would effectively remove Child Labor from State control I would recommend that if this is the desire of the Legislature, the entire Child Labor Law be repealed. Otherwise, I would recommend the enclosed draft.

Sincerely,

Edmund N. Orbeck

Edmund N. Orbeck
Commissioner

Enclosure

Original sponsor: Rules Committee by request of the Governor

DRAFT

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 634

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the employment of minors; and providing for an effective date."

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

* Section 1. AS 04.15.020(d) is amended to read:

(d) Presence of minors on premises. It is unlawful for a person under the age of 19 years to enter or remain upon licensed premises unless he is accompanied by his parent, guardian or spouse who has attained the age of 19 years. A [HOWEVER, A PERSON 18 YEARS OF AGE OR OLDER MAY ENTER AND REMAIN UPON LICENSED PREMISES IN THE COURSE OF HIS EMPLOYMENT AS A MUSICIAN, ENTERTAINER OR BUSBOY. IN ADDITION, A] person under the age of 19 years may enter and remain upon licensed premises which are also recognized as a restaurant for the purpose of dining or dancing if accompanied by his parent, guardian, or spouse who has attained the age of 19 years, or by the parent or guardian of any other minor also present, or by any other adult with the consent of the minor's parent or guardian. The Alcoholic Beverage Control Board, with the approval of the city council if the premises are within the city or with the approval of the borough assembly if the premises are outside the city but within a borough, shall designate which premises are restaurants for the purposes of this section. Licensed premises are premises holding licenses under AS 04.10.020(a) - 04.10.020(d). The Alcoholic Beverage Control Board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation. No establishment may be designated as a restaurant for

purposes of dining without the consent of the licensee.

* Sec. 2. AS 04.15.020 is amended by adding a new subsection to read:

(h) Employment of minors on premises. A person 16 - 18 years of age may enter and remain upon the licensed premises of a hotel or restaurant in the course of his or her employment if the employment do not require or involve the serving, mixing, delivering or dispensing o alcoholic beverages and if the person has the written consent of a parent or guardian and an exemption by the Department of Labor for th employment.

* Section 1. AS 23.10 is amended by adding a new section to read:

Sec. 23.10.332. AUTHORIZATION FOR CHILDREN UNDER ~~17~~ 18 TO WORK. Except for employment exempted under sec. 330 of this chapter and other employment specifically exempted by regulations adopted by the department, no minor under ~~17~~ 18 years of age may be employed or allowed to work without the written authorization of the commissioner. The department shall adopt regulations necessary to implement this section.

* Sec. 2. AS 23.10.340 is repealed and re-enacted to read:

Sec. 23.10.340. EMPLOYMENT OF CHILDREN UNDER 16. Employment of a minor under 16 in any occupations allowed under secs. 325 - 370 of t s chapter shall be limited to:

(1) time outside of school hours;

(2) 40 hours a week when school is not in session;

(3) 18 hours a week when school is in session;

(4) eight hours a day on non-school days;

(5) three hours a day on school days;

(6) the hours between 7:00 a.m. and 7:00 p.m. on any day, except from June 1 through Labor Day when the permissible hours are 7:00 a.m. to 9:00 p.m.

* Sec. 3. AS 23.10.345 is repealed.

* Sec. 4. AS 23.10.350 is repealed and re-enacted to read:

Sec. 23.10.350. EMPLOYMENT OF CHILDREN UNDER ~~17~~ 18. (a) No minor

under ~~17~~ 18 years of age may be employed or allowed to work

(1) more than six days a week;

(2) in excavation, or in surface mining, or underground in mines; or as hoisting engineer in mines; or in the operation of cranes, derricks or hoists; or

(3) in an occupation dangerous to life or limb or injurious to his health or morals.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 OR 17 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

House Judiciary Committee
March 30, 1976

The meeting was called to order by Chairman Gardiner at 1:15 p.m. Members present were Specking, Bradley, Parr, Gardiner and Cotten.

HB 604 UNIFORM LAND SALES PRACTICES ACT HB 604

Larry Carrol, Commerce
John Tillinghast, AG:

Subdivisions of 50 or more lots must register with the department and submit for verification a public offering statement which accurately describes the land for sale. Directed at Boom towns as Valdez where land is being sold sight unseen to unsuspecting buyers. This will require full disclosure so buyer knows what he is getting into. An on sight inspection will be performed by department of commerce to see that public offering statement is accurate.

HB 634 EMPLOYMENT OF MINORS HB 634

Lee Leland, Labor, Wage and Hour division:

Would like an exemption for licensed premises so that young people can work in kitchens, gift shops, and as maids. Also want exemption for those over 16 who are drop outs so they can work steadily. Mr. Leland offered the attached amendment by the ABC Board.

Ron Lorensen, AG's office:

Minors may work on licensed premises with written permission of commissioner and parents. Problem has been with hotels and restaurants who cannot find people willing to work for lower wages, so like young people. But most of these are licensed premises. Department of Labor would like to be notified when a minor is being hired so they can check conditions, hours, wages etc.

HB 713 STUDENT REGENT HB 713

Student regent must actually be a student, if drops out, governor must choose a replacement.

The meeting was adjourned at 2:45 p.m.

A M E N D M E N T

OFFERED IN THE HOUSE Y:

TO: HOUSE BILL NO. 634

AMENDMENT: Page 1 Line 6:

Before the period, insert: "; and providing for an effective date"

AMENDMENT: Page 2, Line 18:

Insert the following:

Sec. 5. AS 04.15.020(d) is amended to read:

(d) Presence of minors on premises. It is unlawful for a person under the age of 19 years to enter or remain upon licensed premises unless he is accompanied by his parent, guardian or spouse who has attained the age of 19 years. [HOWEVER, A PERSON 18 YEARS OF AGE OR OLDER MAY ENTER AND REMAIN UPON LICENSED PREMISES IN THE COURSE OF HIS EMPLOYMENT AS A MUSICIAN, ENTERTAINER OR BUSBOY.] In addition, a person under the age of 19 years may enter and remain upon licensed premises which are also recognized as a restaurant for the purpose of dining or dancing if accompanied by his parent, guardian, or spouse who has attained the age of 19 years, or by the parent or guardian of any other minor also present, or by any other adult with the consent of the monor's parent or guardian. The Alcoholic Beverage Control Board, with the approval of the city council if the premises are within the city or with the approval of the borough assembly if the premises are outside the city but within a borough, shall designate which premises are restaurants for the purposes of this section. Licensed premises are premises holding licenses under

AS 04.10.020(a)--04.10.020(d). The Alcoholi Beverage Control Board shall promulgate regulations for the designation of restaurants and the continuation or withdrawal of the designation. No establishment may be designated as a restaurant for purposes of dining without the consent of the licensee.

Sec. 6. AS 04.15.020 is amended by adding a new subsection to read:

(h) Employment of minors on premises. A person 16--18 years of age may enter and remain upon the licensed premises of a hotel or restaurant in the course of his or her employment if the employment does not require or involve the serving, mixing, delivering or dispensing of alcoholic beverages and if the person has the written consent of a parent or guardian and an exemption by the Department of Labor for the employment.

Sec. 7. AS 23.10.355 is amended to read:

Sec. 23.10.355. PERSONS UNDER 19. No person under 19 may be employed or allowed to sell or serve intoxicating liquors or to work in any room or other place where intoxicating liquors are sold for consumption on the premises, except as provided in AS 04.15.020(h) [(d)].

Sec. 8. This Act takes effect immediately in accordance with AS 01.10.070(c).

3/30 Milton

Introduced: 1/20/76
Referred: Labor & Management and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 634

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the employment of minors."

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

* Section 1. AS 23.10 is amended by adding a new section to read:

Sec. 23.10.332. AUTHORIZATION FOR CHILDREN UNDER 17 TO WORK. Except for employment exempted under sec. 330 of this chapter and other employment specifically exempted by regulations adopted by the department, no minor under 17 years of age [may be employed or allowed] to work without the written authorization of the commissioner. The department shall adopt regulations necessary to implement this section.

* Sec. 2. AS 23.10.340 is repealed and re-enacted to read:

Sec. 23.10.340. EMPLOYMENT OF CHILDREN UNDER 16. Employment of a minor under 16 in any occupations allowed under secs. 325 - 370 of this chapter shall be limited to:

(1) time outside of school hours;

(2) 40 hours a week when school is not in session;

(3) 18 hours a week when school is in session;

(4) eight hours a day on non-school days;

(5) three hours a day on school days;

(6) the hours between 7:00 a.m. and 7:00 p.m. on any day, except from June 1 through Labor Day when the permissible hours are 7:00 a.m. to 9:00 p.m.

* Sec. 3. AS 23.10.345 is repealed.

* Sec. 4. AS 23.10.350 is repealed and re-enacted to read:

Sec. 23.10.350. EMPLOYMENT OF CHILDREN UNDER 17. (a) No minor

18
under 17 years of age may be employed or allowed to work

(1) more than six days a week;

(2) in excavation, or in surface mining, or underground in mines; or as hoisting engineer in mines; or in the operation of cranes, derricks or hoists; or

(3) in an occupation dangerous to life or limb or injurious to his health or morals.

determined by Dept. Labor

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

Introduced: 1/20/76
Referred: Labor & Management and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 634

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Sec. 23.10.340. EMPLOYMENT OF CHILDREN UNDER 16. Employment of a minor under 16 in any occupations allowed under secs. 325 - 370 of this chapter shall be limited to:

(1) time outside of school hours;

(2) 40 hours a week when school is not in session;

(3) 18 hours a week when school is in session;

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(1) more than six days a week;

(2) in excavation, or in surface mining, or underground in mines; or as hoisting engineer in mines; or in the operation of cranes, derricks or hoists; or

(3) in an occupation dangerous to life or limb or injurious to his health or morals.

(b) If the commissioner determines that the duties to be performed by the minor would not unduly endanger the life, limb, health or morals of the minor and if the employment meets the conditions of wages and hours prevailing for the majority of the employees in the industry at the time of employment, the commissioner may grant an exemption in writing from (a) of this section for a minor 16 years of age to work at those duties

(1) outside school hours, or while on school vacation, if the minor is attending school; or

(2) if the minor is no longer attending school.

4.15.020

HOUSE BILL NO. 634

AMENDED

Sec. 23.10.332 (New)

This section permits employment of minors in occupations not prohibited by statute or regulations without the requirement of obtaining an exemption from the Department of Labor, however, it requires the employer to have written authorization for such employment from the Commissioner. The purpose of this section is to provide the Department a handle on employers who hire minors which will give the Department the opportunity to inspect the premises and occupations performed to insure that such occupations are in fact non-hazardous or otherwise prohibited and that the employer employs such minors only during permissable hours of work.

Sec. 23.10.340

Brings Alaska Law into conformity with Federal Statutory permissable hours of work for minors under 16 and repeals sub sec. (b) which prohibits minors under 16 from employment in restaurants.

Sec. 23.10.345 (Repealed)

Repeals the very rigid restrictions of this section which denys authorization for employment to many youths who have dropped out of school though have not graduated but have attained 16 years of age.

Sec. 23.10.350 (Repealed and Reenacted)

The new language of this section broadens employment opportunity for minors 16 and over by deleting certain existing constraints as follows:

a) Removes the 8 hour per day limitation placed on the employment of minors who are 16 but under 18.

b) This hour limitation denys many minors from employment opportunities with employers engaged in industries that traditionally require longer shifts in the conduct of their business, for example: service stations, fish processors and canners who must operate when the fish are delivered until processed, some supermarkets and others. This limitation is particularly restrictive during summer vacation season.

c) Repeals the prohibition dening minors 16 to 18 years of age from employment in housekeeping occupations in Hotels or Lodging Houses.

d) It provides the Commissioner authority to grant exemptions to those 16 and over who have dropped out of school.

These amendments are twofold in value:

1) Expands the opportunity for minors to enter the workforce and engage in gainful occupations, and

2) Provides employers an expanded workforce from which to fill positions that are sometimes difficult to fill with persons who are over 18, particularly in lower paid crafts such as many service trades positions, i.e., dishwashers, kitchen helpers, service station attendants, box or bag boys, etc.

ETL/ltr