ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1709 SJ SJR 4 - SJR 5

population growth in Alaska during construction of the oil pipeline. To the extent that population is underestimated in such circumstances, a real per capita budget limiter would make it difficult for the state to respond to rising demands for services during boom periods. The lag in receipt of the statistics would exacerbate this difficulty.

The only price index available in Alaska is the Consumer Price Index. By contrast, on a national basis several indices are available for the various segments of the Gross National Product -- including special indices for construction and for the components of construction. Because the Consumer Price Index generally rises less rapidly than construction c[illegible]d costs of services of most kinds, including government services, use of the Consumer Price Index would result in a yearly <u>decrease</u> in real government expenditures per capita.

<u>Note</u>: Information on the availability and characteristics of these statistics was supplied by Jim Sullivan of Budget and Management.

Appendix C*

Examples of Expenditure Limit Language

The following model provisions present suggested wording for many of the alternative approaches to and components of a limit on expenditures.

These drafts may be a useful guide in drafting a limitation proposal for any state. However, they are presented as guides only. Conformance to a state's own constitutional and statutory patterns and practice will be required in every case.

Expenditure Limitation

Section 1. It is proposed to amend the Constitution of _____ by adding an article to read:

Article _____ Section 1. Expenditure Limitation. A limit on the total amount of expenditures by the State in any fiscal year is established.

Formula #1. Cost of living and population changes - legislative formula

The annual state expenditures shall not exceed the total expenditures for the prior fiscal year, except for annual percentage changes in the cost-of-living and population. The legislature shall by law provide a method for determining the percentage change in the cost of living and population but in no case shall such percentage change in expenditures exceed the change in the state's per capita personal income. (Modeled after California Senate Constitutional Amendment No. 42, 1977)

*Source: National Taxpayer Conference, "Statement on Limitations of Taxes and Expenditures," August 1978.

Formula #2. Percentage of personal income increase

The annual state expenditures shall not be increased over expenditures of the prior fiscal year by more than the percentage increase in personal income for the prior year or the average of the percentage increase in personal income for the previous /three/five years/, whichever is /greater/lower/.

Formula #3. Percentage increase

The annual state expenditures shall not be increased over expenditures of the prior fiscal year by more than _____%.

Formula #4. Percentage of personal income

The annual state expenditures shall not be more than _____% of personal income for the prior fiscal calendar year or _____% of the average personal income for the prior /three/five fiscal/ calendar years, whichever is /greater/lesser/.

Formula #5. Growth in state economy - Tennessee approach

In no year shall the rate of growth of appropriations from state tax revenues exceed the estimated rate of growth of the state's economy as determined by law. No appropriation in excess of this limitation shall be made unless the legislature shall, by law containing no other subject matter, set forth the dollar amount and the rate by which the limit will be exceeded.

Formula #6. Ratio of personal income to state budget

The annual state expenditures shall not exceed the amount determined by multiplying the limitation ratio by the average state personal income for the three prior calendar years. The limitation ratio is the quotient formed by dividing the average gross budget/expenditures for the three fiscal years immediately preceding the effective date

hereof by the average state personal income for the three calendar years immediately preceding the effective date hereof. (Modeled after a Massachusetts proposal)

Formula #7. Per capita cost of living increase

(1) The annual state per capita expenditure during any fiscal year shall not be increased over its per capita expenditure during the immediately preceding fiscal year by a percentage any greater than the percentage of increase occurring in the state cost of living during the first twelve month period immediately preceding the fiscal year. (Modeled after a Colorado proposal)

(2) The limit on expenditures may be increased or decreased if approved by a majority of the voters who vote upon the question at a statewide special or general election pursuant to a measure enacted and placed upon the ballot by the legislature.

Section 2. Reserve Fund. Any excess of state revenues over expenditures at the end of a fiscal year shall/may be transferred to a Reserve Fund. The Reserve Fund shall not

Formula #1 exceed _____% of the state's personal income for the prior calendar year.

Formula #2 exceed _____% of the prior/current years expenditures.

Formula #3 exceed _____% of the prior/current years revenues.

Such excess amounts not to exceed _____% of _____ may be transferred to a budget stabilization fund or retained as an opening balance in the _____ fund.

Appropriations from the Reserve Fund may be made only upon the exhaustion of all other available funds, including federal emergency funds, upon the declaration of an emergency by the governor, and upon a two-thirds favorable vote of each house of the legislature. Income earned to the fund shall/may accrue to the fund.

Section 3. Excess Revenues. For any fiscal year, the excess of revenues over expenditures, except as provided in Section 2, shall be...

a)...
b)...
c)...

Section 4. Emergency. The limitation imposed by Section 1 may be exceeded upon exhaustion of the fund established in accordance with Section 2 and upon the declaration of an amergency by the governor and upon favorable approval of a 2/3 vote of each house of the legislature. The legislature, by law, shall set forth the amount of the cost of the emergency and the method by which it shall be defrayed. The limitation may be exceeded only for the years in which the emergency is declared. In no event shall such emergency expenditures be included in the computation of the limitation imposed by Section 1 for any other year.

Section 5. Mandated and Shifted Costs. The state shall not impose upon any local unit of government any part of the costs of new program or services, or increased in existing programs or services, unless a specific appropriation is made sufficient to pay the local unit of government for that purpose. The proportion of state revenue paid to all local units of government, taken as a group, shall not be reduced below that proportion in effect at the adoption of this article. Where costs are transferred from one unit of government to another unit of government, either by law or court order, the limitation imposed by Section 1 shall be adjusted and transferred accordingly so that total costs are not increased as a result of such transfer.

Section 6. Severability. If any expenditure category, or revenue source, shall, by a court of competent jurisdiction in a final order, be adjudged exempt from this article, the process of computing the expenditure limitation shall be adjusted accordingly and all remaining provisions shall be in full force and effect.

Section 7. Implementation. The legislature shall enact legislation consistent with and as may be necessary to implement and enforce the provisions of this article.

Section 8. Definitions. /Note: Some of these definitions may not be needed depending upon what limitation is selected./

(1) "Personal Income" means the total income received by persons in _____ from all sources, including transfer payments as defined and officially reported by the U.S. Department of Commerce or its successor agency for a 12-month period of time. /Note: The amount of personal income can be further defined or limited. For example, federal individual income taxes paid may be deducted from personal income./

(2) "Cost of Living" means the Consumer Price Index (all items) for , or any comparable index, as computed by the Bureau of Labor Statistics or the Department of Commerce of the United States, or successor agencies thereto, for a 12-month period of time.

(3) "Population" means the number of people residing in the state, excluding armed forces stationed overseas, as determined by the U.S. Bureau of Census or its successor agency.

(4) "Expenditures" means the total amount of moneys appropriated by the state except:

a) Monies received from the federal government;

b) Principal and interest on bonded indebtedness;

) Appropriations funded by unemployment and disability insurance funds;

d) Appropriations funded by discretionary user charges to the extent that such charges do not exceed the cost of the goods or services and its purchase by the user is discretionary;

e) Appropriations funded from permanent endowment, trust funds, or pension funds;

f) Proceeds of gifts or bequests made for purposes specified by the donor;

g) Monies appropriated for tax relief.

(5) "Fiscal Year" means any accounting period of twelve consecutive months.

(6) "Per Capita Expenditure" means the quotient derived from dividing expenditures of the state for a fiscal year by its population on the first day of that fiscal year.

(7) "Emergency" means an extraordinary event or occurrence which could not have been reasonably foreseen or prevented and which requires immediate expenditure to preserve the health and safety of the people.

Section 9. Effective Date. The Article shall be effective commencing with the _____ fiscal year. (This section should also be used to designate any "base years" needed to determine the expenditure limitation. Care should be taken to spell out the base years involved to prevent uncertainty. It should be pointed out that statistical information such as personal income and population is not timely available which may cause difficulty in ascertaining an expenditure limitation during the time of the budget making process.)

Section 10. Miscellaneous. Nothing contained herein shall be construed as requiring the State to spend or appropriate the full amount of the limitation provided in this article. Nothing contained herein shall be construed to impair the ability of the state or any local unit of government to meet its obligations with respect to existing or future obligations.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

JAY S. HAMMOND
GOVERNOR

NEWS RELEASE

FOR INFORMATION CONTACT:
Chuck Kleeschulte
Press Secretary
Office of the Governor
Pouch A, Juneau, Alaska 99811

Bus. Phone: (907) 465-3500
Res. Phone: (907) 586-1069

HAMMOND EXPLAINS SPENDING LIMITATION PROPOSAL
1-13-81
#9

FOR IMMEDIATE RELEASE

JUNEAU--Governor Jay Hammond today, as another plank in his overall, responsible financial plan for the state, introduced his language for a Constitutional amendment to limit government spending.

Hammond introduced in both Houses a joint resolution calling for the public to vote on a constitutional amendment which would impose a spending limit on state government. The amendment, if approved by voters, maybe in August or November of 1982, would change article IX of the Constitution to limit spending to an increase from the previous year.

"The proposed amendment is conservative, responsible and workable. It will not hobble the state or prevent the performance of any needed governmental function. It will, however, set limits where they are needed and it will not set limits where they aren't needed," Hammond said.

The governor, who will explain his reasons for seeking a constitutional amendment to limit spending in his annual budget message on Thursday, today said such a limit is "imperative" to force increased saving of the state's oil wealth--a plank in his investment plan.

MORE

The spending limitation bill the governor is proposing would apply to both operating and "capital" expenditures. The bill does list 10 specific exceptions from the ceiling, some so that money can be appropriated for investment purposes that really don't involve the actual expenditure of state funds.

The limit calls for state spending increases of money from state sources of only the increase in the federal consumer price index for Alaska for the preceding year plus a percent equal to the state's average yearly growth in population. While increases in the revenues from non-state sources aren't included, federal funds for example, the limit ties increases in state spending to inflation plus population hikes.

The bill says that inflation will be determined by using the federal consumer price index. Currently there is an index for Anchorage and one for Fairbanks will be starting soon. If there is more than a single index the inflation rate will be determined by using the weighted average of the available index in proportion to each community's relative population.

"The use of the data prepared by the federal government is deliberate and essential. The pressure to shape cost and population data to justify increased expenditures would be enormous if those data were prepared by state or local agencies. Using data developed by an independent and separate government avoids that problem completely," Hammond said.

The measure of population will be taken from the federal decennial census and the interim five-year renumerations scheduled to start this decade.

"These two measures of growth, while not always coincident with all governmental needs, will allow the state to keep abreast of most needs and yet hold growth to reasonable and responsible limits.

"To the extent that the state still lags behind its sister states in some areas of governmental services and facilities, the exemptions ... will allow it to catch up, if that is what the electorate wants," Hammond said.

The exceptions include:

--Appropriations for the Permanent Fund or to pay for Permanent Fund dividends. Both can be made from state revenues without regard to or inclusion in the spending ceiling.

--Money can be appropriated to capitalize loan funds. This means money can be set aside to fund state loans but the interest subsidy for low-interest state loans must be appropriated and counted under the spending limitation ceiling.

--Money may be spent for capital improvements, but only if the projects in excess of those that can be afforded from funds included in the budget ceiling are approved by voters. This includes projects funded by appropriation and those approved from the general fund or from bond proceeds.

"Voter approval is a must for the appropriations to be within the exception. But if the voters approve, there are no limits on appropriations for capital improvements," Hammond said.

The proposed resolution defines capital improvements in the same language that appears in sections 8 and 9 of the Constitution on state and local debt.

--Money may be sent to escrow accounts such as to repay general obligation bonds. Hammond said repaying debt would almost always be to the state's advantage and such an expenditure for debt retirement would not constitute a real expenditure, but a form of saving for the state.

--The sixth exception is for money appropriated as a reserve account for disasters of natural or human origin.

The exception allows for the rainy-day account--the Reserve for Emergency Operating Expenses Account passed last year by lawmakers, AS 37.05.159. Money from the account could be spent by the same means that lawmakers could spend money in the event of a natural disaster--the tenth exception included in the proposed bill.

For the legislature to spend in either event would require passage of an appropriation bill by a two-thirds majority of each House, the bill being approved by the governor. If the governor would not approve the appropriation or vetoes it by reducing or striking any item, his veto is final.

"The purpose of the absolute veto is to preclude any excess spending for non-emergency items in a bill appropriating money for disaster relief. Without an absolute veto, this exception would create an unacceptably large loophole," Hammond said.

--The seventh exception allows for money to be appropriated which is generated through "user fees." The term means all taxes or charges which are levied upon those who use a government facility or service. They include everything from hunting and fishing licenses to boiler inspection fees.

"So long as users are paying the money, no purpose would be served in placing this category within the limitations on expenditures," said Hammond, who added he could see no reason why the limitation would promote any increase in such fees at the present time.

--An eighth exception is for appropriations required by court orders or by a transfer of functions from the federal to state government. Transfers from the local to state government, however, would be impacted by the spending limitation.

--And a final exception would be for appropriations possible with money derived from one-quarter of the income from extra additions to the Permanent Fund.

MORE

As a means to encourage additional contributions to the Permanent Fund, Hammond is proposing that one-fourth of the interest earnings from additional contributions to the fund would be "free" money not counted under the limitation. "The more money that is placed in the fund, the more money there will be available to spend outside of the expenditure limitation," Hammond said.

The governor in his Dec. 4 speech in Anchorage outlining his rationale for the limitation stressed that it should include both operating and capital expenditures since "creative" accounting techniques could shift normal operating expenditures to the capital side of the budget--thwarting the purpose of a spending ceiling.

Hammond added that capital projects also entail "downstream" operating and maintenance costs which would justifiably require an increase in operating budgets if the two types of expenditures are not controlled equally.

-30-

Introduced: 1/13/81
Referred: Transportation,
Judiciary and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SENATE JOINT RESOLUTION NO. 4

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

Proposing an amendment to the Constitution of the State of Alaska relating to limitations on appropriations of state money.

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

* Section 1. Article IX of the Constitution of the State of Alaska is amended by adding new sections to read:

letter of intent

SECTION 16. APPROPRIATION LIMITATIONS. The amount of State money ~~appropriated~~ requested by the Governor and ammunated by the legis. during a fiscal year shall not exceed the amount appropriated in the preceding fiscal year by more than the increase in the federal consumer price index for the state for the calendar year preceding the governor's submission of the budget under section 12 of this article plus a percentage equal to the average yearly growth in the State's population as shown by the last two federal censuses or renumerations. Money appropriated under any exception prescribed by section 17 of this article shall not be included in the base for determining the allowable increase from year to year.

EXEMPTIONS

SECTION 17. EXCEPTIONS FROM APPROPRIATION LIMITATIONS. The limitations on increases in appropriations do not apply to appropriations of money to be deposited in the permanent fund; money appropriated to pay permanent fund dividends; money appropriated to capitalize loan funds, but the money to subsidize low interest loans must be appropriated separately and is subject to the limitations; money appropriated to construct capital improvements, whether of bond proceeds or otherwise, where the appropriation for the capital improvements is approved

by the voters; money appropriated to escrow accounts or otherwise to repay general obligation bonds; money appropriated as a reserve for disasters of natural or human origin or other emergencies; money appropriated to coincide with increases in user fees; money appropriated to meet increases in costs to the State resulting from court orders or a transfer of authority or responsibility to the State from the federal government; money derived from one-quarter of the income from those contributions made to the permanent fund which exceed the minimum required by this constitution; or money appropriated by a vote of two-thirds of the membership of each house and approved by the governor to meet disasters of natural or human origin which are declared by the governor.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Introduced: 1/13/81
Referred: Transportation,
Judiciary and Finance

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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VOTE TO EXCEED

by the voters; money appropriated to escrow accounts or otherwise to repay general obligation bonds; money appropriated as a reserve for disasters of natural or human origin or other emergencies; money appropriated to coincide with increases in user fees; money appropriated to meet increases in costs to the State resulting from court orders or a transfer of authority or responsibility to the State from the federal government; money derived from one-quarter of the income from those contributions made to the permanent fund which exceed the minimum required by this constitution; or money appropriated by a vote of two-thirds of the membership of each house and approved by the governor to meet disasters of natural or human origin which are declared by the governor.

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DAILY NEWS MINER-FAIRBANKS, February 23, 1981

Limiting state government

2/23/81

The News-Miner recently published a list of the 700 or so salaried state employees (not counting the University of Alaska nor ferry employees) who are projected to be paid more than $50,000 this year. They comprise about 4½ per cent of the people on our state's payroll.

We'll not attempt to make individual judgments—whether any particular person on the list is performing work worth that amount of money. Many of these people are widely known in Alaska and our readers are quite capable of making such judgments for themselves.

But we do observe that the proportion of highly paid Alaskan state employees is much greater than in other states. Nationwide, 4 per cent of state workers earn $19,000 or more a year; in Alaska 4½ per cent earn $50,000 or more.

And we also observe that many of these Alaskan state government positions appear to be paid significantly more than their counterparts in private employment, and that leads us to a judgment.

Attempts are under way to put a lid on the amount of the annual increase in the state budget. The state Chamber of Commerce is circulating an initiative petition that would limit budget increases to an amount based in part on the 'yearly increase' in per capita personal income.

We believe any such limit should be based on the increase in private per capita income, excluding public employees. It's easy to see how the salaries of our relatively well paid state employees could skew such a limit to make it higher than it ought to be, particularly when we consider that state employees receive pay raises based on a percentage of their income.

And state officials also should consider ending the automatic percentage increases for these highly paid state employees and using flat dollar amounts for them instead. Why should a state employee earning $60,000 a year receive a raise three time greater than a state worker earning $20,000?

If we are to limit the growth of state government—and we believe that is a goal worth trying for—the upward push caused by high state salaries should be disregarded in setting the formula for state spending increases.

ANCHORAGE TIMES, March 16, 1981

State Chamber pushes spending limit

Associated Press

Juneau — Arguing that control of government spending will be the state's biggest challenge over the next 20 years, pro-business groups and politicians united Friday to rally for a legal limit on state spending.

State Chamber of Commerce President Don Dickey urged the audience of lawmakers and businessmen to support an initiative which would restrict state spending to combat the image of Alaskans "as the fiscal fat cats of the North."

The measure is backed by Common Sense for Alaska, a business group lobbying for lower state spending, and the State Chamber. The two groups sponsored a Friday luncheon titled "The Challenge of Plenty," which featured several addresses on state government spending.

The initiative, which has garnered about 200 of the required 16,000 signatures, would keep future state operating budgets at the 1981 level, with increases allowed for growth in population and per capita incomes. If the needed signatures are collected, the measure will go on the ballot in 1982.

At the luncheon meeting, previous administrations and Legislatures were sharply criticized for overspending. Dickey said that in the past 20 years the state's population has grown 84 percent compared with a 3,043 percent increase in the state operating budget.

Lt. Gov. Terry Miller said Alaska has more government per capita than any other jurisdiction, and spends nearly three times per person of the average of states in the Lower 48.

According to projections by Commonwealth North, at an annual state growth rate of less than 20 percent, lower than the current rate of growth, the state will spend $45 billion per year by 2000.

Miller said the Common Sense initiative is "next best" to a constitutionally imposed limit on state spending (SJR) proposed by Gov. Jay Hammond. He said a state officials can't break a constitutional restriction and would be forced to spend and invest oil wealth more wisely.

JUNEAU EMPIRE, March 16, 1981

Group trying to put bud

By MARK BAUMGARTNER
Empire Staff Reporter

Does Alaska have too much money?

The answer, according to state businessmen, appears to be a sober "yes."

A group calling itself Common Sense for Alaska met in Juneau Friday to organize an effort to focus attention on what it sees as a need to limit government spending. The state should, in the words of one speaker, "bring the horse back to the barn" before either the state squanders its oil wealth or an outside force comes and takes it away.

Although there was unanimous support for putting a lid on government spending, there was considerable disagreement over the most judicious way to do it.

"I personally prefer a constitutionally imposed limit which the Legislature and executive branch cannont circumvent," Lt. Gov. Terry Miller said in a speech to the group. Miller said he considers the governor's constitutionalamendment (SJR 4) to be an excellent starting point. SJR 4 would key state spending to a yet-to-be determined base year's budget with allowances for inflation, population growth and emergencies.

Dealing rationally with projected surpluses is the major challenge facing Alaska in the next two decades, Miller said.

Alaska Chamber of Commerce President Don Dickey said businessmen support the lieutenant governor's proposal, but Dickey had doubts the Legislature can get a handle on state spending. He said all the pressures brought to bear on legislators to fund "motherhood" and "apple pie" programs makes it appear the best way to limit spending is to get Alaskans to pass an initiative which takes spending out of the lawmaker's hands.

To back his claims, Dickey cited statistics showing state population growth since statehood at 84 percent, while at the same time the operating budget was up over 3,000 percent.

Dickey said Common Sense has distributed over 200 petitions around the state in the hopes of obtaining 16,000 signatures necessary to put a budget-limiting initiative on the 1982 ballot.

The initiative, if approved by the voters, would do many of the same things SJR 4 would do, Dickey said. The main difference is that it would exempt capital expenditures from the spending limit, concentrating instead on putting a lid on the state's operating expenses.

Some lawmakers, as well as Hammond, have proposed legislation that puts a spending limit on both the capital and operating budgets.

Although not advocating capital limitations in his speech, Miller urged development of cost-benefit analyses for all proposed capital improvement projects. "If any proposed project's benefits are greater than its cost, it is, by definition, an investment. If not, then the project is nothing more than 'spending,'" he said.

Rep. Terry Gardiner, D-Ketchikan, one of the legislators who has introduced legislation to limit capital and operating spending, told Common Sense it is important to remember that if state-funded capital improvements are not checked it will be impossible to keep operating costs down, since capital improvements require maintenance and other costs.

Gardiner applauded the efforts to examine spending limitations but warned that the task may be more difficult than it appears. Besides just looking at ways to cut the bureaucracy, careful scrutiny needs to be given to the economic effects of a host of state programs, he said.

"We have to look at the effect of our loan progams," Gardiner said. As an example he cited the heavy state involvement in housing loans, which he said is causing inflation and is therefore comparable to raising taxes.

ANCHORAGE DAILY NEWS, April 21, 1981

Capital projects need spending limit also, Hammond suggests

By PETE SPIVEY
Daily News reporter

If a proposed constitutional limit on state spending is to have any real meaning, it must apply to capital projects as well as the annual operating costs of government, Gov. Jay Hammond said Monday.

In Anchorage to promote a constitutionally imposed spending lid on government, Hammond said if only operating costs are "controlled," legislators and government agencies would simply find ways to sneak new project funding into their annual capital budgets.

"You just shift things to a different ledger," he said. "Creative accounting permits you to do all kinds of things and I guarantee you all of them would be tried."

Hammond said such a limit would not mean the state could never again fund a capital project. Rather, he says he advocates giving voters more direct say on expensive capital proposals through the referendum process, whether the projects would be built with bonds or paid for with general fund appropriations.

"We could set a limit on capital expenditures and then require anything above that to go before the voters," Hammond said. "In my view, the public ought to have a say when the state is contemplating some of these huge capital costs."

Hammond said his proposal would not hinder the state's effort to provide services. Under his plan, state spending could grow to accommodate population increases and inflation, a formula he said would have allowed a 13-15 percent increase this year. The plan would also allow exceptions for larger contributions to the Alaska Permanent Fund, various "rainy day" reserve accounts and allowances for providing appropriations needed to deal with natural disasters.

Hammond said placing limits on state spending would hardly mean belt-tightening to the point of cutting off any critical state services.

"It seems to me that limiting spending to a 15 percent annual increase is not going to cause us to fail to meet the state's needs."

Hammond's proposal would go on the 1982 ballot and, if approved, would go into effect for the fiscal 1984 budget. He said there is plenty of legislative sentiment for a spending limit, but he's concerned that many legislators seem to want to wait a few years.

"Some say let's wait until 1982 or 1984, but that's like a fat man saying he'll wait until he weighs 400 pounds before he goes on a modest, incremental diet," Hammond said. "Good grief, we may have a $10 billion budget by 1984. That's just too long to wait."

JUNEAU EMPIRE, April 6, 1981

Limit government spending

We're glad to see state legislators moving to tie local governmental growth limits into proposed municipal aid legislation, but we believe that alone is not enough. We also need limits on the growth of school expenditures and on the growth of state government itself.

In the Fairbanks area, for example, increases in school spending have far outstripped additional amounts spent on other units of local government—and that at a time of falling enrollments.

And the Babe Ruth of increased spending has to be our state government, which has gone from a budget of $383 million in 1971 to $2.7 billion this year. That's nearly an eight-fold increase in 10 years and there is not the least indication that, left to its own devices, the rate of increased state spending will slow as long as there is our growing oil wealth to fuel it.

An initiative sponsored by the state Chamber of Commerce would limit the state's operating budget to increases based on a formula that considers the growth of per capita personal income and population. This is one step in the right direction, although we believe the factor for personal income should exclude public employees, who, particularly at the state level, have wages that significantly surpass comparable pay in the private sector.

And while we may have to rely on that initiative, it certainly would be simpler and faster if the Legislature were to impose a similar limit of its own on state spending. The Legislature could do it now. The initiative can't go onto the ballot until the 1982 statewide elections.

We tend to agree with those who say that a state-imposed limit is necessary on local governmental spending if the additional money is to bring about local tax relief, although to their credit, local officials here have pledged to cut taxes if more state aid is made available.

But we believe such a limit also must be put on school operation budgets. Otherwise the additional state money will just go for higher school expenditures and there will be no local tax relief. In our area, the cost of schools makes up the biggest share of the borough budget, yet school officials have not pledged to limit their expenditures.

And ultimately we must cap state spending, too. The legislators could do it, but if they won't, the people will have to through the initiative.

ANCHORAGE DAILY NEWS, March 18, 1981

Spending limit said state's most crucial issue

By JON MATTHEWS
Daily News reporter

JUNEAU — The most crucial issue now facing Alaska is the need for a limit in government spending, Gov. Jay Hammond said Tuesday.

"Everything else pales in contrast," Hammond said at a press conference here.

Hammond said that without such a limit holding back the state's pool of skyrocketing oil wealth, legislators "are going to try to get everything for everybody."

"Absolutely the most crucial issue facing the state is a reasonable and appropriate constitutional amendment on spending," said the governor who has proposed a spending limit to the legislature.

In what might be taken as a warning to legislators, Hammond said: "I will look with a

jaundiced eye at everything that crosses my desk" unless there is a spending limit.

With personal taxes being repealed, the public doesn't sense any need to restrict spending of the oil wealth, the governor said. Yet, Alaska could wind up in bad financial shape if it doesn't set limits, he said.

Although he did not sound especially enthusiastic about the prospect, Hammond said he expects the state to eventually take over the federally operated Alaska Railroad.

"I suspect we will ultimately end up owning the railroad . . . I don't presume it's going to make money for the state," Hammond said.

The governor said he believes the state couldn't afford to let the railroad be taken over by a private enterprise that might only want to break up and sell the railroad's substantial land and property holdings — as well as its rights-of-way.

Hammond said he's not eager to see the state take over the railroad this year.

The governor said he's apprehensive about the proposed repeal of the state's Coastal Zone Management laws.

"My major concern is that the local people have a very significant say in what goes on in their own backyard," he said.

Hammond also said he's not receiving a great deal of public support for possible state investment in the Alaska natural gas pipeline, but added that such investment might turn out to be a good idea.

The governor, however, said the state should "not be the first out of the chute" in offering investment in the line, and should wait until other investors are lined up.

Turning to Washington, D.C., Hammond said as far as he is concerned, "the jury is still out" on U.S. Interior Secretary James Watt.

But the governor was quick to add that he believes Watt may be more sensitive to environmental concerns than national press reports indicate.

Hammond said he has discussed with Watt the possibility of more federal oil leases in the Gulf of Alaska. But the governor said Watt indicated he would probably screen out areas that face environmental objections from the state.

ANCHORAGE TIMES, April 21, 1981

Hammond urges limits on spending

by Ellis E. Conklin
Times Writer

Practically everyone, including a majority of legislators, wants to see a constitutional limit on state spending, Gov. Jay Hammond said Monday.

But the governor is concerned that the proposed amendment is not getting the proper attention by the Legislature.

"They have no sense of urgency about this," Hammond said in an interview here.

Hammond, in Anchorage to drum up support for the constitutionally imposed spending lid on government, called the amendment "the key to our fiscal salvation.

"Without it, our fiscal prognosis in this state is very dim," Hammond said. "I believe this is the most important thing now confronting the Legislature, especially now that we can no longer count on the (state) income tax."

Hammond repeatedly stressed that his plan would not thwart the state's effort to provide essential services. Rather, state spending would grow to meet population increases and inflation. Under such a formula, spending would have increased 13-15 percent this year.

"And if the people want to exceed the limit on (the general) operating budget, we'll put it on the ballot and let the people decide."

Hammond said capital improvement projects and any other initiatives the people deem necessary could still be funded, but that such expensive projects should first meet the tests of the referendum process.

The governor also said his spending plan would be flexible enough to ensure that funds are made readily available to deal with natural emergencies and to build up the Alaska Permanent Fund and other "rainy day" reserve accounts.

If approved by the Legislature, Hammond's proposal will go on the 1982 ballot. If it receives the required

(See HAMMOND, page A-3)

Hammond . . .

(Continued from page A-1)

two-thirds vote, it will go into effect for the fiscal 1984 budget.

"It is imperative that we pass this now," Hammond said. "If we wait and wait as some legislators would like to do, the budget by 1984 might be out of our control.

"This plan is a way of stopping us from floundering, from the non-direction in state spending that tries to meet all the demands of varying constituencies."

Hammond indicated his ceiling on state spending plan never would have been needed had the income tax not been repealed.

"That was one of the most imprudent things we've ever done," he said. "Suspend it, yes. But it should never have been repealed.

"And before we ever reinstate it, we'll have to lease everything. It was a very bad mistake."

The governor complained that he has been unfairly branded as anti-development.

"Isn't that ironic? They say I'm against growth in this state, but without the income tax, how are we supposed to make (industry) self-supporting without state subsidies?"

On the Point MacKenzie dairy farming project, Hammond said he was not familiar with the recent studies that questioned whether it was economically feasible to produce milk at a profit on the 15,000 acres across Kink Arm from Anchorage.

The reports — one by the state, one by an independent milk processor and one by the University of Alaska — indicated that dairy farming on Point MacKenzie might not be possible without out large doses of state support.

"We're virtually subsidizing everything now anyway," Hammond said.

in the long run will pay off.

"In 50 to 100 years from now, people will bless us for the 'imprudent' expenditures we made. It has enormous potential to help produce food supplies for the world."

ANCHORAGE DAILY NEWS, April 23, 1981

Alaska officials warn of a possible economic calamity

By JON MATTHEWS
Daily News reporter

JUNEAU — State legislators Wednesday held their first public hearing of the year on a proposed constitutional limit to the state's skyrocketing spending.

Gov. Jay Hammond has called such a limit on spending his top priority, and other legislators also have voiced support for a budget lid.

Wednesday, the 101st day of the 12th Alaska Legislature, found Rep. Terry Gardiner, D-Ketchikan, urging the House Finance Committee to support his proposal for a constitutional change to limit state spending increases to the rate of growth of Alaska's economy.

The committee didn't take action on the proposal. But House Finance Chairman Sam Cotten, D-Eagle River, said he will "make every attempt to get it past the legislature this year."

Gardiner echoed warnings,

often repeated by Hammond and other officials, that unless state spending is controlled, Alaska could face economic calamity by the end of the century when Prudhoe Bay oil revenues dry up.

Those revenues currently fuel all but a small fraction of the state budget, and the state's dependence on oil money increases as other taxes are cut.

"If government expenditures collapse at that point, we're going to have about 200,000 more people around than we need," he told the House panel.

"We may run into the problems that New York did," he said.

Rep. Oral Freeman, D-Ketchikan and vice chairman of the finance panel, said he believes Alaska's growing pile of money, unless controlled, "is going to do more harm than good ... it's eventually going to destroy us."

Gardiner, a liberal Democrat, conceded that in past years he would have "vigorously opposed" such a spending limit as unneeded. But he argued that the "old rules, such as the 'user ought to pay' " have been thrown out the window as Alaska's oil wealth has piled up in the state's treasury.

"All these old rules that used to restrain state government are effectively out the window," Gardiner said.

Gardiner said that while those seeking money from the state used to have to justify their requests, "the burden of proof is on the government now to say why we shouldn't fund something."

"These new rules ... have been classified by the consumers — everybody that comes to the legislature and asks for something," he said. "These people say that the state is going to have $300 billion in revenues over the next 25 years, so what does my $50 million have to do with it?"

Gardiner said more than ever, interest groups are hiring consultants and lobbyists to put big spending packages together for presentation to lawmake

As the state invests mo its money into public w projects, it is also going to to continue to pay fund operate and maintain t projects, said the lawma

SJR

5

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

May 21, 1981

MEMORANDUM

TO: Representative Ben Grussendorf

FROM: Leslie Longenbaugh
Research Staff

RE: Retention Election of Judges
Research Request Number 81-141

You asked that we provide information on options for changing the system of retention by election for district and superior court judges in this state. You would like to find a way of reconciling the differences between the population most likely to be served by the judge and the population which is given the opportunity to vote on the judge's retention.

The "modified Tennessee plan," where judges are appointed and then subject to approval or rejection by the voters, is incorporated in the Alaska Constitution; however, that Constitution does vest the Legislature with the power to establish the manner in which judges are approved or rejected (see Article IV, Section 6, of the Alaska Constitution, which is Attachment C to this memorandum).

PRESENT SITUATION

One question raised by this inquiry is whether the group which is served by a judge includes few, many, or most of those who may vote for his or her retention. For the most part, the disparity between these two groups is significant. For example, a judge whose court is in Sitka will seldom hear cases from Juneau, Ketchikan, and Wrangell, and yet will be subject to approval or rejection by voters in those communities. Some proponents of change argue that a judge who is unpopular among the population he or she serves is nonetheless likely to be retained by a voting population that includes a majority who are uninformed about the judge's performance.

This difference between those served and those who may vote on a judge's retention is also perceived as a problem by some staff within the court system. The Honorable Duane Craske, Superior Court Judge in Sitka, for example, told us that he would welcome a reform in this area, seeing it

as a way of furthering communication between a judge and those he or she serves. Nick Maroules, Attorney for the Judicial Council,[1] also has said that he thinks some change in this direction is a good idea, particularly for Southeast.

For the purposes of court administration, Alaska is divided into four judicial districts (see Attachment A). The First Judicial District encompasses all of Southeast Alaska, the Second includes the far northwestern region of the state, the Third comprises Southcentral Alaska and the Aleutian Islands, and the Fourth cuts a diagonal swathe across the center of the state including Fairbanks and Bethel. In the First Judicial District, superior and/or district court judges sit in four municipalities: Juneau, Ketchikan, Sitka and Wrangell. In the Second, judges sit in Kotzebue and Nome; the Third Judicial District contains five communities where judges sit: Anchorage, Homer, Kenai, Kodiak and Valdez. The Fourth has judges in Bethel and Fairbanks. The size of the four districts is thought by some to reduce the chances that a voter will be well-informed about the performance and popularity of a judge from another part of the judicial district.

Once appointed by the Governor, an Alaskan district or superior court judge is likely to spend most of his or her tenure in the municipality where he or she was originally assigned. This position contradicts the popular view that judges quite frequently move from one town to another. There are three occasions when a district or superior court judge will be temporarily replaced by a judge from another part of his or her judicial district: 1) illness; 2) vacation; and 3) preemption, or disqualification.

The third case mentioned above, that of disqualification, is the most common reason for temporary reassignment. Alaska law allows participants in civil cases and defendants in criminal prosecutions to request that their cases be tried before a judge other than the one assigned. The petitioner need not provide any reason for the request for disqualification. In addition, it sometimes happens that a judge feels himself or herself to be unable to participate fairly in a proceeding; in these cases, the judge files a disqualification from the case.

Once a change of judge has been granted, the Presiding Judge of the judicial district must choose a judge of the same authority as the disqualified judge, i.e., district or superior, to go to the other court to hear the case. This reassignment is sometimes a problem, particularly in judicial districts with only a few courts. For example,

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[1]Nick Maroules, Attorney/Legal Analyst, Alaska Judicial Council, 420 "L" Street, Suite 502, Anchorage, 99501; telephone: 279-2526.

because none of the four towns in the First Judicial District which have courts presently contains more than one superior court judge, judges who are reassigned within this district must nearly always travel some distance. During 1980, 2% of the cases heard in the First Judicial District were reassigned because of the disqualification of the original judge.[2]

In terms of the number of judges and the size of the population served, the Third Judicial District is the largest in the State. Anchorage, which is located within the Third District, has ten Superior Court judges and seven District Court judges. When a judge is disqualified from a case in the Anchorage area, another judge usually can be found in Anchorage to replace him or her on the case. Judges in Valdez, Kenai, Homer, and Kodiak, however, are also likely to be replaced by Anchorage judges. For this reason, it would seem that voters in the Third Judicial District would be more likely than voters in the First to know the judges from throughout their district.

The two remaining judicial districts, the Second and the Fourth, present situations similar to that in the First, although on a different scale. Each of these districts contains two municipalities with courts, and in each the two municipalities are separated by hundreds of miles.

OPTIONS

In your request to this Agency, you mentioned two alternatives for resolving the perceived disparity between those eligible to vote for a judge's retention and those who are served by that judge. These options are: 1) to have the voters within each election district vote on the retention of the judges in their election district; and 2) to have the voters in each community vote on the retention of judges serving in their community. For reasons discussed below, we offer a third option for your consideration: to break the present judicial districts down into smaller election units which would correspond more closely to the areas actually served by the judges within them.

---

[2]We computed this figure ourselves by counting the number of disqualifications in Judge Stewart's 1980 files, and using the figure for the total number of cases other than traffic violations given to us by Merle Martin, the Manager of Technical Operations for the Court System (telephone: 264-0544). This figure is not presently available for the other three judicial districts, but presumably could be computed in the same fashion.

The first option, to have judges retained only by the voters in their election districts, would present difficulties because of the impracticability of matching election district boundaries with the present areas served by judges (compare Attachments A and B). In order to institute this change, the area served by each judge would have to be redefined to conform to the election district.

The second option you suggested, to have only those voters in the community where a judge sits vote on his or her retention, also would be difficult to institute. If only the community where the judge sits is included in this plan, the surrounding smaller communities whose inhabitants are routinely subject to the judge's orders will be disenfranchised. For example, the judge in Sitka who hears cases from Angoon would not be voted upon by the inhabitants of Angoon, or of any of the small communities whose cases he or she hears.

We have worked out a third option, which is a combination of the two you suggested and the present practice: having the Division of Elections break up the present judicial districts, precinct by precinct, into smaller election units. This would be similar to the Division's present practice, which is to divide the election districts every ten years, precinct by precinct, in order to match the ballots to the judicial districts involved.

According to Patty Ann Polley, Director of the Division of Elections,[3] her office hopes to divide up the reapportioned election districts in time for the 1982 retention elections. Ms. Polley reports that making divisions smaller than the four judicial districts would not present any real difficulty.

The primary problem associated with this approach seems to lie in the timing. Ms. Polley has estimated that the Division of Elections must have the figures from the reapportioned election districts by February 1982 in order to use the new districts in the 1982 elections. Thus, February 1982 is the latest date, assuming that there are no major delays in the progress of the reapportionment plan, that the Division of Elections will be starting work on the decennial division of election districts into judicial districts. If new election units of some kind are to be included in the Division's efforts, the Legislature will have had to pass the appropriate legislation, and the Judicial Council (or some other group which is qualified to make such judgments about the judiciary) will have had to decide on the boundaries of the new "judicial election districts" before February 1982.

---

[3]Patty Ann Polley, Director, Division of Elections, 3rd Street Community Building, Juneau, 99811; telephone: 586-6181.

Of course, at the request of the Legislature, the Division of Elections could redivide the judicial districts at almost any time; the time limits mentioned above refer to the earliest possible election, i.e., 1982, and to the most efficient use of staff time at the Division of Elections, since they must redivide the districts in 1982 as they do every ten years.

Mr. Maroules, the Attorney for the Judicial Council, has told us that as far as he knows, the idea of redistricting for judicial elections has never come before the Judicial Council. Mr. Maroules has placed the idea on the agenda for the next general meeting of the Council, scheduled for the first week in June, and has said that he will call us with the results of that meeting. We will keep you informed of the Judicial Council's response to the suggestion.

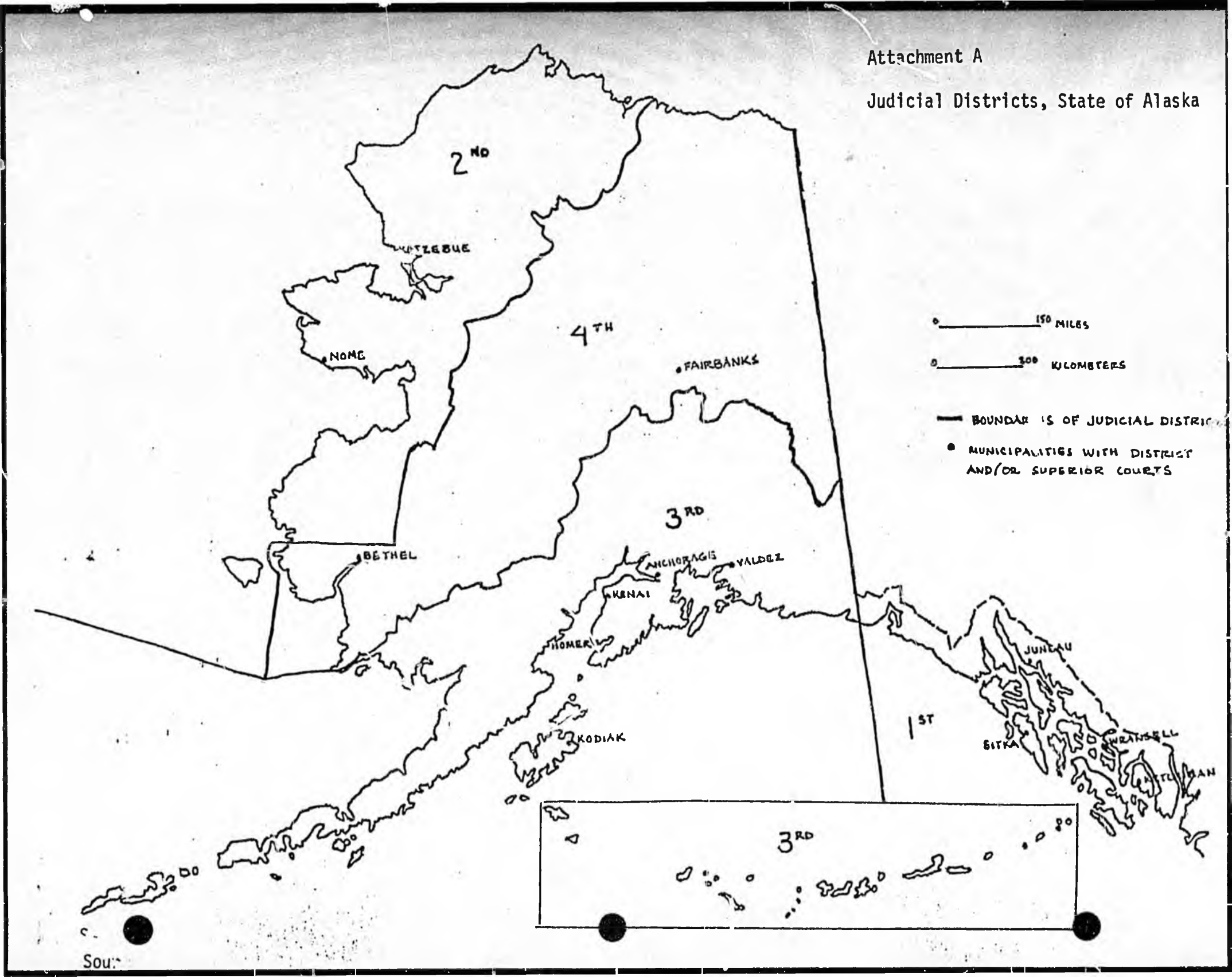
If you would like us to research further any of the alternatives listed above, please do not hesitate to call or us.

LL/bf

Encls.

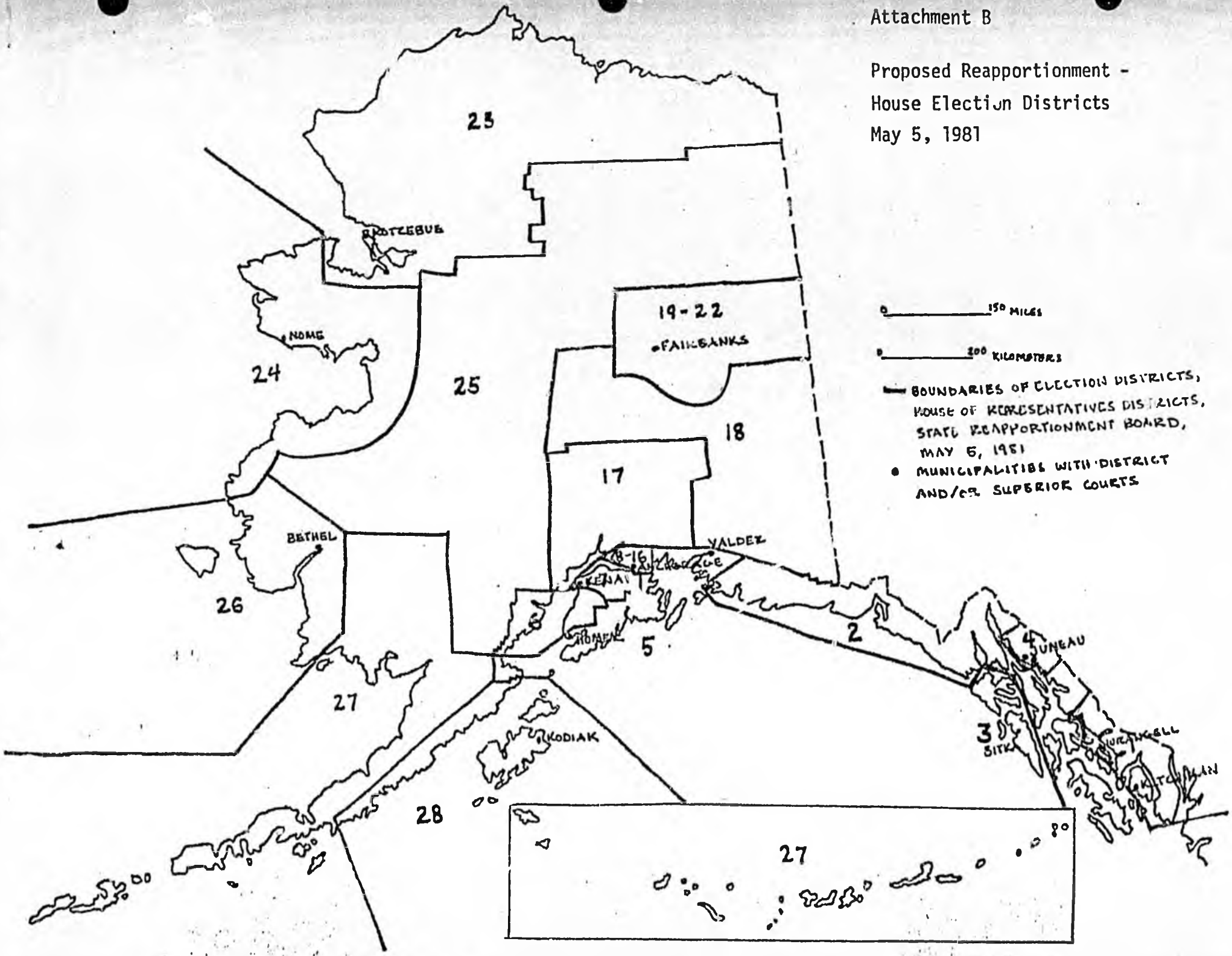
Attachment A

Judicial Districts, State of Alaska



Attachment B

Proposed Reapportionment -
House Election Districts
May 5, 1981



tion of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

Supreme Court

SECTION 2. (a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

(The amendment to this section was approved by the voters of the state August 25, 1970 and became effective October 10, 1970. Subsection (b) was added.)

Superior Court

SECTION 3. The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

Qualifications of Justices and Judges

SECTION 4. Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

Nomination and Appointment

SECTION 5. The governor shall fill any vacancy in an office of supreme court justice or superior court judge by appointing one of two or more persons nominated by the judicial council.

Approval or Rejection

SECTION 6. Each supreme court justice and superior court judge shall, in the manner provided by law, be subject to approval or rejection on a nonpartisan ballot at the first general election held

more than three years after his appointment. Thereafter, each supreme court justice shall be subject to approval or rejection in a like manner every tenth year, and each superior court judge, every sixth year.

Vacancy

SECTION 7. The office of any supreme court justice or superior court judge becomes vacant ninety days after the election at which he is rejected by a majority of those voting on the question, or for which he fails to file his declaration of candidacy to succeed himself.

Judicial Council

SECTION 8. The judicial council shall consist of seven members. Three attorney members shall be appointed for six-year terms by the governing body of the organized state bar. Three non-attorney members shall be appointed for six-year terms by the governor subject to confirmation by a majority of the members of the legislature in joint session. Vacancies shall be filled for the unexpired term in like manner. Appointments shall be made with due consideration to area representation and without regard to political affiliation. The chief justice of the supreme court shall be ex officio the seventh member and chairman of the judicial council. 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. The judicial council shall act by concurrence of four or more members and according to rules which it adopts.

Retirement

Impeachment

Additional Duties

SECTION 9. The judicial council shall conduct studies for improvement of the administration of justice, and make reports and recommendations to the supreme court and to the legislature at intervals of not more than two years. The judicial council shall perform other duties assigned by law.

Compensation

Commission on Judicial Qualifications

SECTION 10. The commission on judicial qualifications shall consist of nine members, as follows: one justice of the supreme court, elected by the

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 23, 1981

Mr. Frank Scheibl
Box 2546
Palmer, Alaska 99645

Dear Mr. Scheibl:

Thank you for your comments on the election of judges. I share your view on this matter.

The Judiciary Committee has been assigned SJR 5, "Proposing amendments to the Constitution of the State of Alaska providing for the election of supreme court justices and superior court judges." I have enclosed a copy of SJR 5 for your information and review.

I will include a copy of your comments in each Committee member's file for his information when this proposed legislation is heard before the Committee.

Sincerely,

Pat

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

SJR 5 - Opp

STAND REPLY
IN THE FILE
THANKS, ETC.

RECEIVED
APR 01 1981

13

MSG 81-00010357 PRTY 1 03/31/81 11:45:49 ORIG: LM00 IN= 0006 OUT= 0022
FROM: MARTIE/ MAT SU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M. PAGE 0001

TO: SEN. RODEY, SEN. BENNETT, SEN. HOHMAN, SEN. PARR, SEN. RAY, REP. BROWN, REP. CLOCKSIN, REP. CHUCKWUK, REP. MILLER, REP. ANDERSON, REP. O' CONNELL, REP. PHILLIPS
FROM: FRANK SCHEIBL, BOX 2546, PALMER 99645
THE UNFOUNDED REMARKS IN THE TESTIMONY OF A JUNEAU JUDGE WITH REGARD TO THE ELECTION OF ATTORNEYS GENERAL SEEM TO LEND STRONG SUPPORT TO THE ELECTION OF ALL JUDGES. SCARE TACTICS TO MAKE PEOPLE FEEL INSECURE WITH SELF-GOVERNMENT SHOULD BE SOUNDLY DISCOURAGED. WE WANT TO ELECT ALL JUDGES.

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 23, 1981

Mr. Leonard Moffitt
Box 745
Palmer, Alaska 99645

Dear Mr. Moffitt:

Thank you for your comments on the election of judges, and support that concept.

The Judiciary Committee has been assigned SJR 5, "Proposing amendments to the Constitution of the State of Alaska providing for the election of supreme court justices and superior court judges." I have enclosed a copy of SJR 5 for your information and review.

I will include a copy of your comments in each Committee member's file for his information when this proposed legislation is heard before the Committee.

Sincerely,

Pat

Senator Patrick M. Rodey
Chairman

PMR/ods
Enclosure

APR 0 8 1981

20 RECEIVED

MSG 81-00011309 PRTY 1 04/06/81 18:53:40 ORIG: LM00 IN= 0013 OUT= 00
FROM: MARY MATSU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M.

TO: CHAIRMEN OF ALL STANDING COMMITTEES
REP. GRUSSENDORF, REP. COTTEN, REP. CLOCKSIN, REP. BROWN, REP. MURLIER
REP. ZHAROFF, REP. SMITH, REP. MILLER, REP. CATO
SENATOR GILMAN, SENATOR BENNETT, SENATOR DANKWORTH, SENATOR PARR,
SENATOR RODEY, SENATOR MULCAHY, SENATOR FAHRENKAMP, SENATOR KELLY,
SENATOR FISCHER, SENATOR RAY
FR: LEONARD MOFFITT, BOX 745, PALMER 99645
THE JUDICIAL SYSTEM SEEMS RELUCTANT TO INFORM THE PEOPLE OF PROCEDURES, POLICIES AND RIGHTS, ETC. THIS ACCENTUATES THE QUESTION, "DOES THE JUDICIAL SYSTEM FUNCTION SUBCONSCIOUSLY AS A PRIVATE BUSINESS FOR THE BENEFIT OF ITS OPERATORS AT THE EXPENSE OF JUSTICE AND OF THE PEOPLE?". ELECTION OF JUDGES WILL ANSWER THAT QUESTION.

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

April 5, 1981

Mr. Leonard Moffitt
Box 748
Palmer, Alaska 99645

Dear Mr. Moffitt:

Thank you for your comments concerning SJR 5 and SJR 6. I will include a copy of your correspondence in each committee member's file for his consideration of this proposed legislation.

I am unfamiliar with your citation of the U.S. Constitution relating to election of judicial officers. On the chance that it was mistranslated in communication, I would appreciate receiving the section section and article to what you referred in your earlier message.

Again, I appreciate the views you have expressed.

Sincerely,

Pat

Patrick M. Rodey
Chairman

PMR/ods

I share your support for elected judges.

13

MSG 81-00010489 PRTY 1 03/31/81 17:33:54 ORIG: LM00 IN= 0012 OUT= 007
FROM: MARY/MATSU TO: JUNEAU INFORMATION
TARGET: LJH2 SUBJ: P.O.M. PAGE 0004

TO: SENATE JUDICARY COMMITTEE
SENATOR RODEY, SENATOR BENNETT, SENATOR HOHMAN, SENATOR FISCHER, SENATOR PARR
HOUSE JUDICARY COMMITTEE
REP. BROWN, REP. CLOCKSIN, REP. CHUCKWUK, REP. MILLER, REP. ANDERSON, REP. O'CONNELL, REP. PHILLIPS
FR: LEONARD MOFFITT, BOX 748, PALMER 99645
PEOPLE WHO WOULD SHOOT DOWN OUR RIGHT TO ELECT PUBLIC OFFICIALS SUCH AS JUDGES ARE SHOOTING AT OUR FREEDOM JUST AS SURELY AS ONE WHO WOULD SHOOT AT OUR PRESIDENT. SECTION 2, ARTICLE 14 OF THE U.S. CONSTITUTION ADDRESSES ELECTION OF REPRESENTATIVE, EXECUTIVE AND JUDICIAL OFFICERS.

RECEIVED
APR 01 1981

THANK YOU FOR YOUR COMMENTS. COMMITTEE
I WILL INCLUDE YOUR MESSAGE IN THE FILES FOR REFERENCE ON SJR 5 AND 6.

I'M SORRY, BUT I DON'T RECOGNIZE YOUR CITATION OF THE U.S. CONSTITUTION RELATING TO ELECTION OF JUDICIARY OFFICERS. IF IT WAS MISTRANSLATED, COULD YOU SEND IT AGAIN?

AGAIN, THANKS FOR EXPRESSING YOUR VIEWS
PAULA

Senator Kelley Chairman
Judiciary

Walt Bumala Phone#745-3905
Star Rt. B Box 7539
Palmer, Alaska 99645

Great Lander
3110 Spenard Rd.
Anchorage, Alaska 99503

FEB.23 1981

RECEIVED

Dear Editor,

Our new Justice Compton is concerned with the public perception that appellate courts often determine their verdicts first, then "reason backward" in an attempt to justify those verdicts. Justice Compton conceded that the above happens all the time.
Senator Ray indicated thet 50% of the cases that reach the Alaska Supreme Court are reversed. It would seem to follow that 50 % of all Alaska decisions would be reversed if appealed to the Supreme Court.

The "reason backwards" process is probably highly contributive to the 50% reverssal at supreme court levels.

Another failure in our system of justice is the predisposition to Jury tampering. Jury tampering is treated as a serious offence if, committed by one of the masses.

If a case does not have a jury, then the Judge becomes the judge and the jury. If the judge is also the jury, he should be selected by the attorneys the same way a normal jury is selected. He should then be shown the same respect.

Now the Judge, or Judge/Jury, Plaintiffs representative, Defendant's representative are all attorneys ---a"common bond" that probably contributes immeasurably to the practice of first determining the verdict and "reasoning backwards" to justify the verdict. The "common bond" could well contribute to controled evidence presentations to assist in justifying a "reason backwards" verdict.

The "Common bond" and "reasoning backwards" are probably possible heavy factors in the charges of discrimination that have been pointed at the judiciary.

Handing the plaintiffs and defendants each a tape of the days court proceedings imediately upon conclusion of a case for the day, could reflect reduction in the "reasoning backwards" verdicts.

We cannot expect the judiciary to assist the masses in promoting real change in the judicial system. Any real change would probably be looked upon by the judiciary as a reduction in their power to discriminate, and therefore, meet with strong resistance in many forms from them.

Real change must be pushed by the people if it is to happen. Election of Judges from the masses with recall provisions would be a great step forward in separating the "common bond", eliminating "reasoning backwards", promoting judicial creditability and public respect of the judiciary as well as fostering government of the people, by the people, and for the people.

Walt Bumala

Walt Bumala

Alaska Judicial Council

420 L Street, Suite 502
ANCHORAGE, ALASKA
99501
(907) 279-2526

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CHIEF JUSTICE
SUPREME COURT

EXECUTIVE DIRECTOR
TERESA J. WHITE

February 24, 1981

Mr. Kevin Bruce
c/o Senator Pat Rodey
Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Kevin:

It was good to see you in your new role. It seems to suit you well. Enclosed are the materials we discussed: the Minutes of the Constitutional Convention, and some ABA materials. The letter from Stephen Goldspiel tells the status of each document from the ABA. Once you've taken a look at these, you may have ideas about other materials that would be of value to you. Let me know.

I plan to be in Juneau sometime around the 10th of March, so will stop and see you then. Thanks again.

Sincerely,

Teresa J. White
Executive Director

enclosures

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON JUDICIAL SELECTION, TENURE AND COMPENSATION

1155 EAST 60TH ST., CHICAGO, ILLINOIS 60637 TELEPHONE (312) 947-4000

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New Albany, MS 38652
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825 Maple Ave.
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888 16th St., N.W.
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Box 1191
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11075 East Blvd.
Cleveland, OH 44106

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Richard O. Gantz
509 West Third Ave.
Anchorage, AK 99501

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Andrew R. Golman
110 N. Wacker Drive
Suite 500
Chicago, IL 60606

LSD LIAISON
Stanley J. Cohn
113 Walter Scott St.
Apt. 3
New Orleans, LA 70121

STAFF DIRECTOR
Stephen Goldspiel
1155 E. 60th St.
Chicago, IL 60637
312/947-3981

Rec'd. SG. 2-17-81

February 10, 1981

Teresa White, Esquire
Executive Director
Alaska Judicial Council
420 "L" Street, Suite 502
Anchorage, Alaska 99501

Dear Ms. White:

In response to your inquiry, I have enclosed two obsolescent booklets by the ABA Standing Committee on Judicial Selection, Tenure and Compensation which are designed to assist a state or local bar association in the judicial selection process, draft guidelines NOT APPROVED BY THE ABA HOUSE OF DELEGATES, AND THEREFORE NOT OFFICIAL which may replace portions of the enclosed booklet, a book describing the work of the ABA Standing Committee on the Federal Judiciary regarding federal judicial appointments, Standard 1.21 relating to court organization, and an article entitled "Judicial Selection and Retention in the United States".

We would be glad to supply additional copies of the ABA publications at no cost.

Sincerely,

Stephen Goldspiel

Stephen Goldspiel,
Staff Director

SG/lr

Enclosures

P.S. The Standard represents official ABA Policy.

1.21 Selection of Judges. Persons should be selected as judges on the basis of their personal and professional qualifications for judicial office. Their concept of judicial office and views as to the role of the judiciary may be pertinent to their qualification as judges, but selection should not be made on the basis of partisan affiliation.

(a) Personal and professional qualifications. All persons selected as judges should be of good moral character, emotionally stable and mature, in good physical health, patient, courteous, and capable of deliberation and decisiveness when required to act on their own reasoned judgment. They should have a broad general and legal education and should have been admitted to the bar. They should have had substantial experience in the practice, administration, or teaching of law for a term of years commensurate with the judicial office to which they are appointed. In addition to these qualifications:

(i) Trial judges. Persons selected as trial judges should have had substantial experience in the adversary system, preferably as judges or judicial officers in other trial courts, or as trial advocates, and in any event should have had experience in the preparation, presentation, or decision of legal argument and matters of proof according to rules of procedure and evidence.

(ii) Appellate judges. The selection of appellate judges should be guided by the aim of having an appellate bench composed of individuals having a variety of practical and scholarly viewpoints, including some with substantial experience as a trial judge. Persons selected as appellate judges preferably should have high intellectual gifts and experience in developing and expressing legal ideas and facility in exchanging views and adjusting differences of opinion.

(b) Procedure for selecting judges. Judges should be

selected through a procedure in which for each judicial vacancy as it occurs (including the creation of a new judicial office) a judicial nominating commission nominates at least three qualified candidates, of whom the chief executive appoints one to office.*

(i) The judicial nominating commission should be constituted of eight members as follows: The chief justice of the highest court, or a justice of that court nominated by him, should be a member ex officio, and should be the commission's presiding officer, but should not have a vote. Four public members, who are neither judges nor lawyers, should be appointed to the commission by the chief executive, for staggered terms of at least three years. Three members of the legal profession should be appointed to the commission for staggered terms of at least three years. The lawyer members should be selected by an official bar association that includes all active members of the bar in its membership, or by the chief justice where there is no such bar association. In states with large or geographically separated populations, separate nominating commissions should be established on a statewide basis for appellate judges, and on a regional basis for judges of the courts of original proceedings. The judicial member of a district nominating commission should be a supreme court justice or intermediate appellate court judge designated by the chief justice and chosen on the basis of his spe-

*The Commission recommended a "judicial confirmation" procedure as an acceptable alternative, but this recommendation was rejected by the House of Delegates. Under judicial confirmation, the appointing authority presents nominees, whom the confirmation commission either approves or disapproves. The proposed procedure is patterned on that employed by the ABA in the selection of federal judges below the Supreme Court, wherein the Standing Committee on Federal judiciary serves essentially as a judicial confirmation commission.

cial familiarity with the bench and bar of the district involved.

(ii) The commission should be provided with staff assistance. It should maintain an inventory of qualified nominees by actively and continually soliciting names of persons suggested as potential nominees or persons who have expressed their interest in being nominated. The appointment procedure should be as follows: Within 30 days after the occurrence of a vacancy in a judicial office with respect to which it has nominating authority, the commission should submit to the chief executive, and simultaneously make public, the names of at least three persons qualified for appointment to the office. Fewer than three names may be submitted if the commission certifies that there are not three persons with the requisite qualifications. The chief executive should appoint one of those nominated; if he fails to do so within 30 days after the list of nominations has been submitted to him, the chief justice should select an appointee from the list of nominees.

(iii) The person so selected should hold office either (a) during good behavior until reaching the age of compulsory retirement, or (b) for a preliminary term of two years and until the next general election thereafter, when his name should be submitted, without opposing candidates, for confirmation or rejection by the electorate in the areas served by the court to which he has been appointed. Where the latter procedure for tenure of office is adopted, a judge who is confirmed should hold office for a term of six (eight/ten) years, when his name should again be submitted, without opposing candidates, for confirmation or rejection by the electorate. He may hold office for successive terms thereafter, subject to like periodic confirmation, until reaching the age of compulsory retirement.

Commentary

Judicial qualifications.

Selecting competent judges is the most important aspect of establishing and maintaining an excellent court system. The judges perform the central functions in the administration of justice and provide standards of proficiency and conscientiousness that guide members of the bar, court auxiliary staff, and the general public in their relationships to the courts.

Judges should be selected on the basis of their personal and professional qualifications. Their political views and loyalty or service to party should be disregarded. While it is appropriate to consider their concept of judicial office itself, candidates for the judiciary should be evaluated in this respect according to whether they can apply the law with a disinterested concern for justice for all.

Judges should have superior self-discipline, moral courage, and sound judgment. They should be able to listen readily to others and to be detached, even-handed, and decisive. They should have a breadth of education sufficient to understand the variety of problems that come before the courts. They should be professionally qualified as lawyers so that they can interpret and apply the law competently. They should have had experience in making practical and critical judgments concerning human relations.

A judge should be mentally fit and alert and be physically capable of performing the duties of the office for which he is being considered. Consideration should be given to his age, both as it relates to his professional maturity and to the years he can devote to judicial service before reaching the age of retirement. It should become a regular part of the process of selecting a judge that an up-to-date medical report on his health be available to the nominating commission.

A person selected as a trial judge should have had previous experience in that capacity or as a trial advocate before courts or administrative tribunals. Experience as an advocate trains him in the rules of procedure and evidence, makes him aware of the problems and responsibilities of the trial lawyer, and exposes him to models of judges. Experience as an advocate, however, is neither indispensable nor always sufficient preparation for being a judge. It is especially appropriate to promote to higher judicial office judges, court commissioners, and other judicial officers who have shown outstanding competence.

An appellate judge should be familiar with the trial process which, as an appellate judge, he is called on to review. He should have the ability to develop and present legal ideas, to give genuine consideration to views with which he does not initially agree, and to write clearly and incisively, for this is the process of decision-making in an appellate court. At the same time, an appellate court should reflect a broad spectrum of professional, intellectual, and civic experience to facilitate its function in developing the law.

Judges serving in specialized departments of courts of original proceedings should include in their number individuals who have technical proficiency in the applicable field of specialization.

The standards in this Section may be augmented by further requirements as to extensiveness of experience and superior professional competence where such requirements appear feasible and appropriate.

References:

JONES, THE TRIAL JUDGE: ROLE ANALYSIS AND PROFILE, IN THE COURTS, THE PUBLIC AND THE LAW EXPLOSION (Jones, ed., 1966).

Schaefer, *Good Judges, Better Judges, Best Judges*, 44 J. AM. JUD. SOC'Y 22 (1960).

Rosenberg, *The Qualities of Justices—Are They Strainable*, 44 TEXAS L. REV. 1063 (1960).

Medina, *Some Reflections on the Judicial Function at the Appellate Level*, 1961 WASH. U. L.Q. 148 (1961).

Kilmuir, *Judicial Qualities*, 36 N.A. L. R. 112 (1960).

WATSON & DOWNING, THE POLITICS OF THE BENCH AND THE BAR, ch. 8 (1969).

Selection procedure.

The selection of judges should be non-political. Election of judges ordinarily involves either political contests or, in non-partisan elections, contests based on little more than name familiarity. An appointive system is therefore preferable. The power of judicial appointment properly lies with the chief executive officer. He derives his mandate from the broadest political base and is least vulnerable to the influence of any particular group. He is also subject to the widest scrutiny by news media and the public at large. The chief state executive nevertheless may have a conflict of purpose between appointing good people as judges and filling judgeships in furtherance of his political objectives and the pacification of his diverse constituencies. For this reason, it is essential to bring into the selection process persons who do not have this conflict.

Judicial nominating commission.

The recommended method of merit selection of judges is appointment by the chief executive from a list of nominees submitted by a judicial-nominating commission. This method of selection, often called the "Missouri Plan," has long been advocated by the ABA and such court-reform organizations as the American Judicature Society. In this procedure, a judicial nominating commission, composed of the chief justice, or his designee, laymen, and lawyers, compiles names of prospective candidates for judicial office. When a vacancy

occurs, the commission submits a list of three qualified candidates to the chief executive, who makes a selection from this list.

In compiling its list of nominees, the commission should enable itself to draw on the widest possible sources of information. For this reason, it should systematically seek out names of potential nominees. In tendering its list of nominees, the commission should submit at least three names for each vacancy to be filled. The commission should accompany the list with a written statement of each candidate's qualifications, but should not rank its nominees. When more than one vacancy occurs at one time, the commission may submit separate slates for each position or submit one larger combined slate. The commission may submit less than three names for a vacancy where it is prepared to certify that there are not three persons with the requisite qualifications. All nominations by the commission should be made public so that anyone having information or opinion pertinent to a nominee's fitness to be a judge can make it known to the governor. The chief executive must fill the vacancy within 30 days after he receives the list of nominees, but may fill a vacancy from any list submitted for the court in question within the 30-day period. If the governor fails to fill the vacancy within the prescribed period, the power to appoint should revert to the chief justice, who should make his selection from the list of nominees. This provision protects the integrity of the procedure and assures speedy appointments.

In states with large or very dispersed populations, a single nominating commission could not adequately reflect general sentiment and, at the same time, make informed nominations for all courts in the states. States of this kind should have several commissions: a central one for nominating appellate judges, and regional ones for nominating judges of the courts of original jurisdiction. Where the state has an intermediate appellate court organized on a regional basis, or where the

justices of its highest court are selected by districts, the regional nominating commissions can be organized within those boundaries. Otherwise, the regional boundaries might correspond with groups of trial-court districts or similar organizational divisions of the court system. The judicial member of a regional nominating commission should be specially associated with the region, both as a matter of representation and because he is likely to be better informed about the persons who might be considered as nominees. The public and lawyer members of a regional nominating commission should also be drawn from the region, but in other respects—diversity of residence, term of office—should correspond to the commission that nominates appellate judges.

Whether there is one nominating commission or several, the judicial members should be designated by the chief justice and the public members by the chief executive. All members of the commission should be appointed with special regard for their knowledge of the various responsibilities of the court system and their knowledge about potential candidates for judicial office. The lawyer members should be chosen by the official legal organization of the legal profession in states where such organizations exist. Their selection may be by election by the membership or, if the bar is so large that the membership is not widely acquainted with each other, then by appointment by the bar organization's governing board. Where there is no official organization of the legal profession in a state, the lawyer members of the commission should be appointed by the chief justice.

The commission should have a staff to coordinate the investigations of potential nominees, make reports and preliminary evaluations, and perform necessary administrative functions. The investigation of the candidates might begin with preliminary screening, based on the candidate's answers to a commission questionnaire designed to eliminate those persons not interested as well as those obviously not

qualified. An adaptation of the questionnaire devised by the American Bar Association Standing Committee on the Federal Judiciary could be used. The investigation should include interviews with the candidate and respected members of the profession who know his abilities and personality. The commission should then prepare a report on the candidate's qualifications.

The general public should come to recognize that a judge's retention in office should not depend on popular election. Such elections, even when conducted on the basis of a judge's running on his record or of non-partisan candidacies, depend mostly on name familiarity. Rarely is the public, especially in densely populated urban and suburban areas, actually informed as to a judge's competence and fitness for office. A judge running for reelection is often vulnerable to opposition by special interests or on the basis of a single decision which he had no legal authority to avoid rendering. Hence, if politically practicable, procedures for selection and tenure of judges should be adopted that do not employ elections or referendums. It is accordingly recommended that judges, upon appointment, hold office during good behavior. They should be subject to inquiry concerning their fitness at any time while in office as recommended in Section 1.22.

Where maintenance of public confidence in judicial-selection procedures requires that there be an electoral process, judges should run on their records. A judge's retention in office should be determined by the electorate of the area served by the court to which he is appointed. His name, unopposed, should be submitted to the electorate for confirmation or rejection in a general election after a preliminary two-year term, and thereafter on a periodic basis. This procedure is not without deficiencies, because voters are usually no more qualified to decide whether a judge should be retained in office than to decide whether he should be elected as a candidate. In addition, the lack of opposition may

leave the voters uninformed on the real issues. On the other hand, the retention election provides a measure of popular review in judicial selection. It is also superior to reappointment by the governor, the confirmation commission, or a specially constituted retention commision because it avoids placing a judge in a position of dependency on other officials or agencies of government.

A judge selected under this procedure would be eligible to remain in office, upon periodic reconfirmation, subject to the requirements of compulsory retirement at a specified age. The provisions concerning compulsory retirement are in Section 1.24.

Election of judges.

All methods of judicial selection involving initial choice by popular election are disapproved. Experience with judicial elections conducted on a politically partisan basis has shown such a procedure to have profoundly adverse effects on the courts. Partisan elections inject political issues into judicial selection, require judges to maintain relationships with political parties and political leaders, obligate judges in raising and spending money for election campaigns, and can result in ouster of able judges from office for reasons having no relationship to their perfomance in office.

Non-partisan election procedures are also unacceptable. They require judicial electioneering and campaign fund raising, and they subject judges to political pressure concerning their decisions. In localities with large concentrated populations and a large number of judges, non-partisan elections confront the electorate with long lists of candidates who are personally known by very few voters. Experience with non-partisan election indicates that it is successful only where most judicial vacancies are, in fact, filled in the first instance by interim gubernatorial appointments rather than by popular election.

Whatever method of judicial selection is used, the legal

profession should undertake an advisory and educational role in the selection process. Acting through professional associations at the local and state levels, the bar should ascertain professional opinion concerning the qualifications of those who may be considered for judicial office and should seek to make its judgment known and influential.

Where elections for judicial office are held, preferential polls among the members of the bar may be appropriate where their opinion is informed by regular involvement in court proceedings. Where members of the bar are not thus informed, their expressions of preference may be little better based than public opinion at large. In any event, the judiciary and the legal profession should take necessary measures to see that campaigns for judicial elections are conducted with proper decorum. Canon 7 of the Code of Judicial Conduct recommended by the American Bar Association prescribes standards in this respect, and should be adhered to and enforced.

References:

WINTERS, ED., SELECTED READINGS ON JUDICIAL SELECTION AND TENURE (1967).

Nelson, *Variations on a Theme—Selection and Tenure of Judges*, 36 S. CAL. L. REV. 4 (1962).

AMERICAN BAR ASSOCIATION COMMITTEE ON JUDICIAL SELECTION, TENURE & COMPENSATION. MODEL BY-LAWS FOR STATE & LOCAL BAR ASSOCIATIONS RESPECTING APPOINTMENT & ELECTION OF JUDGES (1971).

GROSSMAN, LAWYERS & JUDGES (1965).

WATSON & DOWNING, THE POLITICS OF THE BENCH AND BAR (1969).

COSTIKYAN, BEHIND CLOSED DOORS (1966).

1.22 Discipline and Removal of Judges. All judges should comply with the Code of Judicial Conduct and with such

AMERICAN BAR ASSOCIATION

JUDICIAL ADMINISTRATION DIVISION

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

BE IT RESOLVED, That the American Bar Association encourages the use of the attached Guidelines for Judicial Selection by state and local bar association committees on evaluation of candidates for judicial office.

REPORT

These proposed Guidelines for Judicial Selection were prepared by the Division's Lawyers Conference, and are based on a set of guidelines used by the Chicago Bar Association's Committee on Evaluation of Candidates.

A need exists, we believe, for a set of criteria to be used in screening candidates for judicial appointments and for judges seeking retention.

The standards we recommend are: integrity, legal knowledge and ability, judicial temperament, punctuality and diligence, health, age, professional experience, past professional conduct, and other aspects of character and ability.

These "Guidelines" are not intended to be the only criteria to be used in screening judicial candidates, but are suggestive of basic areas that should be examined.

The Judicial Administration Division Council approved the "Guidelines" at its meeting on August 3, 1980. Attached as an exhibit is the actual report upon which action was taken by the Division Council.

Respectfully submitted,

Lawrence S. Margolis
Chairman

February, 1981

GUIDELINES FOR JUDICIAL SELECTION

Introduction

Any Committee on Evaluation of Candidates* should consider the following Guidelines for the evaluation of candidates for judicial positions and sitting judges seeking retention.

The criteria to be considered should be: integrity, legal knowledge, legal ability, judicial temperament, punctuality, diligence, health, age, professional experience, and such other elements of character and ability which the Committee shall define.

These Guidelines will be applied to the two groups which will appear for evaluation, namely (1) new candidates for judgeships on the trial and appellate courts of the state; and (2) sitting judges seeking reappointment for retention or as candidates for other judgeships.

The Guidelines for candidates should embrace (1) personal characteristics; (2) professional preparation for judicial positions; and (3) in cases of sitting judges, judicial performance. The judicial responsibilities involved in each court should be considered fully to provide a framework against which to measure the applicant's performance or prospective performance.

Scholars of judicial selection have stated that there have not been developed reliable objective yardsticks for the measurement of desirable judicial attributes or desirable judicial behavior. Most of those attributes are personal, subjective and human.

1. Integrity

Webster defines integrity as a rigid adherence to a code of behavior and equates it with honest. Obviously this bare definition will not suffice for our purposes without supplying the code of behavior referred to in the definition. A definition sometimes referred to is integrity is a rigid adherence to the facts and the law.

Expanding on the definition referred to would require that the candidate have the capacity to be fair and unbiased. Moreover, instinct toward self-preservation, self-aggrandizement, prejudice, bias and selfishness should be completely eliminated or suppressed as far as is humanly possible in decisions to be made by a judge.

*As used herein shall be deemed to mean and include any entity or person having responsibility for the recommendation of or the appointment of judicial candidates.

Analysis of the deportment, rulings, decisions and attitude of a sitting judge should bring to light the answers to these questions:

(1) Does this judge allow bias or prejudice to dictate the decision?

(2) Is the judge honest in his formulation of the decision?

(3) Does the judge base the decision on the evidence of the facts and the law without regard to who the parties or the lawyers are that are involved?

(4) Is the judge able to disregard partisan political interests and act independently?

Generally, when evaluating a lawyer with no previous history as a judge, the reputation of the individual in the legal community and in activities not related to the practice of law have to be analyzed. Taking into consideration the traditional role of a lawyer as an advocate presenting his or her client's view in the best possible light, certain questions can be asked:

(1) Does he or she misrepresent facts or evidence?

(2) Does he or she deliberately misapply or misquote the law?

(3) Can the representations made by counsel to other members of the bar be representations that can be relied upon?

(4) Is the candidate's emotion controlled, so that reason prevails?

(5) Does he or she seek to attain the client's objective within the justice system and the Code of Professional Responsibility?

An individual with the integrity necessary to qualify must be one who is most able to put aside self-aggrandizement, prejudice and bias; who can ignore personalities and parties to the greatest degree; who can base the decision on the facts and the law applicable to the facts.

2. Legal Knowledge and Ability

It is difficult to separate the concepts of legal knowledge and legal ability. Legal knowledge, in its simplest form, may be defined as familiarity with established legal concepts and proce-

dural rules. Legal ability may similarly be defined as the intellectual capacity to interpret and apply established legal concepts to the facts and circumstances presented. Legal ability also involves skills in communicating, orally and in writing, the thought processes leading to a legal conclusion.

Legal knowledge and ability is not a static quality, but is acquired by the experience of a person and be the continual learning process involved in keeping abreast of changing concepts through education and study.

Commentators in their discussions of criteria for the selection of judges note that "knowledge of legal procedure, (staying) abreast of legal developments, level of skill of communications, (and) level of skill in written communications" are important elements of a judge's qualifications. The Key to Judicial Merit Selection: The Nominating Process 64 (1974). There is no doubt that what they are referring to, generally, is called legal ability.

A candidate for judicial office should possess a higher level of legal knowledge and ability than the average lawyer practicing in the community.

3. Judicial Temperament

Judicial temperament appears to be universally regarded as a valid and important criterion in evaluating prospective and sitting judges. However, this quality is perhaps more easily recognized than defined. Nevertheless, there are several indicia of judicial temperament which, while ultimately premised upon subjective judgement, are sufficiently understood by practitioners and laymen alike as to afford workable guidelines which can be applied by impartial evaluators seeking to measure the temperament of a judicial candidate.

Among the qualities which judicial temperament comprises are patience, open-mindedness, courtesy, tact, courage, firmness, understanding, compassion and humility. Because the judicial function is essentially one of facilitating conflict resolution among competing interests, judicial temperament implies the ability to deal with counsel, jurors, witnesses and parties calmly and courteously, and the willingness to hear and consider what is said on all sides of a debatable proposition. It requires the ability to be even-tempered, yet firm; open-minded, yet willing and able to reach decisions; confident, yet not egocentric.

Because of the range of topics and issues with which a judge may be required to deal, judicial temperament presumes the willingness and ability to assimilate data outside the judge's own experience, without bias. It presumes, moreover, an even

disposition, buttressed by a keen sense of justice, which enables an intellectual serenity in the approach to complex decisions, and forbearance under provocation. Judicial temperament also implies a mature sense of proportion: reverence for the law, but appreciation that the rule of law is not static and unchanging; understanding of the judge's important role in the judicial process, yet recognition that the administration of justice and the rights of the parties transcend the judge's self-importance. Judicial temperament is typified by recognition that "there but for the grace of God go I," as the judge deals with the matters spread before him. It requires "an uncommon touch, commonly applied."

It is perhaps wise to note that in contrast to these elements of judicial temperament, the factors which indicate a lack of such temperament are also identifiable and understandable. Judicial temperament thus implies an absence of arrogance, impatience, pomposity, loquacity, irascibility, arbitrariness or tyranny.

Judicial temperament is a quality which is not easily quantifiable but does not wholly evade discovery; its absence can probably be fairly ascertained. Wide-ranging interviews which touch upon not only the law, but also upon social, moral, ethical and other concerns, should provide insight into the temperament of judicial candidates. Evaluation of a sitting judge, of course, is facilitated by the fact that his bearing, demeanor and temperament are discernible to the practitioners who appear before him, his fellow judges, and those coming into contact with him on a regular basis.

Notwithstanding the inherently subjective elements of any estimate of judicial temperament, such an inquiry is an extremely important criterion of judicial fitness.

4. Punctuality and Diligence

Webster's Dictionary describes a punctual person as one who acts or habitually acts at an appointed time or at a regularly scheduled time. Punctuality is also considered to mean being prompt. A Judge should be prompt in the performance of his judicial duties. He should recognize that the time of litigants, jurors and attorneys is of value and that habitual lack of punctuality or diligence creates dissatisfaction with the administration of the court.

Diligence is a relative term incapable of an exact definition. For example, diligence, in its ordinary sense, may be said to be that displayed in the management of one's own affairs by the average business or professional persons met with in daily life--persons who have the usual amount of practical common sense and who are endowed with ordinary prudence and foresight.

As applied to a judge, diligence may be defined as a steady application to the judicial business at hand; a constant effort to accomplish the undertaking. While not necessarily the same as industriousness, it does imply the elements of constancy, attentiveness, persistence, perserverance, painstakingness, assiduousness and untiring effort.

The lawyer should have a reputation which indicates that he or she does not procrastinate in his or her law practice; that he or she meets procedural deadlines in his or her trial work; that he or she keeps his or her commitments; and that he or she respects the time of the other lawyer and his or her client as well as of the court.

Under Canon 3 of the Association's Code of Judicial Conduct, a judge should perform the duties of his or her office impartially and diligently. The proscription for such canon involves diligence in a wide spectrum. It entails adjudicative responsibilities, order and decorum in proceedings, patience and courtesy to the persons with whom the judge deals, an efficient and businesslike attitude while being patient and deliberate, the prompt dispatch of business, the devotion of adequate time to duties, punctuality in attendance and expeditiousness in determinations. Necessarily, it also involves alertness to the character and fitness of persons and their conduct within the community of lawyers and judges, the fulfillment of all administrative responsibilities with dispatch, appointments based on need, and attention to the rules of disqualification.

Canon 3(A)(5) of the Code of Judicial Conduct states that "a judge should dispose promptly of the business of the court." This has been referred to also as element to be considered in the criteria for diligence. The earlier Canons of Judicial Ethics referred to a personal attribute that the judge should be prompt and punctual. Canon 7 and Canon 34. Measuring the punctuality of a sitting judge is much easier than applying it to the lawyer who seeks a judicial position. The criterion of punctuality applies with equal force to the lawyer and to the judges.

5. Health

Webster defines health as embracing a condition of being sound in body, mind or soul and with some freedom from physical disease or pain. This is one criterion which may be capable of objective consideration.

Any history either of a past condition or a current condition should require further inquiry as to the degree of impairment. Not all physical disabilities should be a cause for rejection of a candidate, but any serious conditions must be considered carefully as to the possible effect these could have on a person's ability to perform the duties of a judge.

It is the desire of the Judiciary Committee (and to some extent that had confirmation of the Board of Governors of the Alaska Bar Association) that we keep the selections down to a minimum, because of the limited number of lawyers that we have in the Territory we wanted to restrict the selection of the governor. In fact, the fear has been expressed already that initially the governor might have too much determination in selecting the judges. For that reason it was kept down to two, but with the increase in size of the state it is well recognized that then the judicial council should have latitude in submitting more than two nominations for the one vacancy.

SUNDBORG: May I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: You may, if there is no objection.

SUNDBORG: Mr. McLaughlin, several days ago when we were discussing this article for the first time, as I heard you, you answered a question, asked by someone, on whether if the governor did not like the names suggested to him he could call for more names, and my recollection was that you answered that in that case more names would be supplied. Was that a considered answer?

MCLAUGHLIN: That was not a considered answer. I believe that I corrected myself. Under this article, under Section 9, the governor has no right of refusal, he cannot refuse. The obvious answer to it, that's the way the section was intended, if there was any other intent it would mean, particularly with the present status of the Alaska Bar, that if the governor refused, he would very promptly exhaust all nominees and he would pick the man that he wanted.

SUNDBORG: Thank you, I just wanted to clear the record. May I address another question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection.

SUNDBORG: Also with respect to Section 9, it does not mention there is an office of chief justice. Is there an office of chief justice created by this article? The reason I ask is that when a man, for instance, is appointed by the governor to the position of chief justice, does he hold that position subject to the elections every ten years, and the retirement provision is in here for life, or does each governor who is elected have the right to name a chief justice from among the panel that then makes up the supreme court?

MCLAUGHLIN: There is an office of the chief justice and once appointed by the governor, he remains the chief justice for life or until removed by the voters or until retired for other cause or resignation.

PRESIDENT EGAN: Mr. White?

WHITE: My question was somewhat along the same line, Mr. President. I am not sure that that answered it or not. Did I understand the intent of this section Mr. McLaughlin, to be that when the office of chief justice of the supreme court becomes vacant it, the new appointee is automatically the chief justice?

MCLAUGHLIN: Those who are designated by the judicial council, the nominees, the governor selects one of the two or maybe three nominees. The governor selects one of those and that man becomes the chief justice.

WHITE: Not only the first time but each subsequent time the office becomes vacant?

MCLAUGHLIN: That is correct.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Following through on the same line, if the governor desired to elevate one of the justices of the supreme court to be the chief justice, it would have to go through the regular procedure of approval by the judicial council that his name might be one of two submitted to the governor, and then it would be up to him to choose?

MCLAUGHLIN: That does not preclude a member of the supreme court from becoming chief justice. Actually, under this act he could resign. The judicial council could select him, he and someone else s mitted to the governor and if the governor selected him, then he would become chief justice.

V. FISCHER: Would he have to resign?

MCLAUGHLIN: There is a possibility he would have to resign.

PRESIDENT EGAN: Are there any other questions or amendments relative to Section 9? If not, we will proceed with Section 10. Are there amendments to Section 10? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin? With respect to Section 10 I am in the dark as to what you mean by this phrase, "on the basis of appropriate area representation".

MCLAUGHLIN: The phrase, "on the basis of appropriate area representation" was put in there as a guide in order to assure that the judicial council would not consist entirely of three lawyers, let us say from an area like Anchorage. It was intended to have the representation from all areas of the Territory. We were indicating an intent to have a geographical

representation.

SUNDBORG: That then refers to and modifies the word, "appoint". They "appoint on the basis of appropriate area representation"?

MCLAUGHLIN: That is right.

V. RIVERS: Are members of the bar, all members of the bar, members of the "organized state bar", or is that just the American Bar Association?

MCLAUGHLIN: The "organized state bar" was a generic term the Committee took as best representing what would be a statewide organization of attorneys. Originally the Committee did have the expression "The Alaska Bar Association or its successor". The difficulty was that the legislature could terminate the organized bar, that is terminate the integrated bar, and we use the "organized bar" as best representing that association which would represent all the attorneys of the Territory.

V. RIVERS: "Organized state bar" would not necessarily imply that all members admitted to the bar then were members of that organized bar, is that right?

MCLAUGHLIN: That would imply this, that all could belong to it.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I would like to address a question to Mr. McLaughlin. My question really has reference to Section 11 but affects Section 10. In Section 11 you mention that "the chief justice shall thereafter be ex officio a seventh member and the chairman of the judicial council" and then mention that it requires an affirmative vote of four of its members. Does the term, "ex officio member", restrict his voting rights in that group?

MCLAUGHLIN: It does not restrict his voting rights at all.

HURLEY: In the matter of a tie he would have a vote?

MCLAUGHLIN: He does anyway.

PRESIDENT EGAN: Mr. Smith.

SMITH: I would like to address a question to Mr. McLaughlin. I am just a little curious as to the Committee reasons for providing that the organized state bar shall appoint the three attorney members and that the governor shall appoint the three nonattorney members.

MCLAUGHLIN: The reason, Mr. President, for that is that is the very essence of the so-called Missouri Plan. The three who are appointed by the bar represent a craft in substance, the theory being, and it has worked out in Missouri, that they best know their brothers, and they are there, based solely on their professional qualifications but selected because they would represent in theory the best thinking of the bar, and they are there solely because they represent their craft. In essence there is nothing undemocratic about it because of the fact that we know by its very nature that the judges of the supreme and superior court will be attorneys. The three lay members are in substance those who represent the public. Under the Missouri Plan there is a specific provision that the members appointed by the bar of Missouri shall be elected. They specifically use the word "elected". We didn't use it, we did not deem it necessary. Under the Missouri Plan the three laymen are appointed by the governor. There is a difference in this Section 9 in the sense that the laymen under our Section 9 are required to be approved by the senate. That is, they are subject to confirmation by the senate. The reason that varies from the Missouri Plan is that what happened was in Committee there was quite some discussion about the popular representation.

DAVIS: Mr. President, before he goes ahead, he is talking about Section 9, I am sure he meant Section 10. I would like it to be clear.

MCLAUGHLIN: Do you desire me to proceed, Mr. President, or wait until that arises.

PRESIDENT EGAN: It might be inasmuch as the question has arisen that if there is no objection, Mr. McLaughlin could proceed. Mr. Fischer?

V. FISCHER: I would like to give cause to the question to arise by introducing an amendment on this subject.

PRESIDENT EGAN: Mr. Fischer, you may introduce your amendment at this time. The Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Section 10, page 3, line 22, strike the comma after the word 'article', substitute a period and strike the remainder of the sentence."

V. FISCHER: Mr. President, I move and ask unanimous consent for the adoption of this motion.

MCCUTCHEON: I object.

COGHILL: I second the motion.

PRESIDENT EGAN: Objection is heard. Mr. Coghill seconds the motion. The question is open for discussion. Mr. Fischer?

V. FISCHER: I would just like to briefly say that I believe the confirmation requirement is not necessary and is in a way

discriminatory against the lay members. I can see why it was put in originally, to give the legislature some say in the selection of judges. We have now amended Section 7 to provide that the qualifications, in effect, would be established by the legislature, and I believe that therefore we should not require confirmation of lay appointees to the council by the legislature.

PRESIDENT EGAN: Is there further discussion of the motion by Mr. Fischer? Mr. Taylor?

TAYLOR: Perhaps Mr. Fischer did not give full consideration to this particular section of the proposal. Under our present act, the Bar Association, the integrated bar, is an official body of the Territory. It is, you might say, chartered, by the legislature, and compulsory membership is required under the act. Nobody can practice law unless they have been admitted to the bar and belong to the integrated bar. Now the bar is screening their applicants, their men for the board, on this judicial board. They must have certain geographical representation in the integrated bar. We have three from the First Division, three from the Third Division and three from the combined Second and Fourth Divisions. So the selection of the three attorney members of the Commission are a selection by an official Alaska organization, the integrated bar. The other three would be selected and approved by the senate, appointed by the governor and approved by the senate. The attorney members have already been approved by the Alaska Bar Association, so why then put them through a further screening when they have already been screened by the members. The lay members have not been screened at all, only by the senate. We feel that the bar members are screened by the bar, then the lay members are screened by the senate. It makes it even.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, there is in Section 10, it is pertinent to this motion, the way that I interpret it, line 16, "the appropriate area", in line 20, "different major areas". I would like to ask Mr. M[illegible]ghlin if the intent was that the three attorney members of the judicial council would come from three appropriate areas and the three lay members would come from different major areas than that of the three appropriate areas?

MCLAUGHLIN: There is no difference. In fact, if the Committee on Style and Drafting desires in the future to change it, we would be delighted. The one reason why we have left in the words "major areas" on the laymen representation is the possibility (forgive me, Mr. Walsh) that Nome itself might have the feeling that it would be left out in its representation. If we struck "major areas" then there would be

an implication that we did not have to worry about certain areas of the Territory. Frankly, it is my belief that both could be made to conform and the same wording could be used.

COOPER: In other words then, the idea is not to cause the three laymen to come from different areas than the areas from which the three lawyers came?

MCLAUGHLIN: No, there was no such intent.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I would like to ask the question of the Judicial Committee, if using the word major, does not that denote there is also a minor?

MCLAUGHLIN: In answer to that, Mr. Londborg, if the representatives from the alleged minor areas so desire, we can strike the whole expression, "major area or appropriate area" and then you're not assured of any representation at all. It is the desire of the Committee to have a general geographical representation on the judicial council and that includes all areas.

COGHILL: Point of order. I believe we are diverting from the subject before the Convention. We have a motion on confirmation by the senate for the nonattorney members. We are talking about representation from the major areas. I think we ought to dispose of the subject at hand.

PRESIDENT EGAN: You are correct, Mr. Coghill. That was allowed because the question was asked. The question is, "Shall Mr. Fischer's amendment, inserting a period and striking the words, 'subject to confirmation by the Senate', on line 22 of page 3, be adopted?" Mr. Davis?

DAVIS: Mr. President, was Mr. Fischer's motion seconded?

PRESIDENT EGAN: Yes, by Mr. Coghill. Mrs. Nordale?

NORDALE: I would like to call attention to the fact that one speaker said that the organized bar was an arm of the Territorial government and the senate was an arm of the Territorial government, and I would like to point out that the governor is certainly an arm of the Territorial government and elected by direct vote of the people.

HELLENTHAL: Mr. President, on Mrs. Nordale's suggestion I heartily agree. The people through their agency, the integrated bar, are going to screen the three attorney members. The people through their agent, the governor, will screen the nonattorney members. I don't know why we should get the senate in on the act in addition.

PRESIDENT EGAN: Does anyone else wish to speak on the subject?

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Fischer's amendment be adopted?"

METCALF: Roll call.

PRESIDENT EGAN: Mr. Metcalf asks that the roll be called. The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 26 - Armstrong, Boswell, Coghill, Collins, Cooper, Cross, Davis, V. Fischer, Hellenthal, Hilscher, Hurley, Kilcher, Knight, Lee, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, Rosswog, Sundborg, Sweeney, VanderLeest, White.

Nays: 27 - Awes, Barr, Buckalew, Emberg, Gray, Harris, Hermann, Hinckel, Johnson, King, Laws, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Metcalf, Nerland, Nolan, V. Rivers, Robertson, Smith, Stewart, Taylor, Walsh, Wien, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 26 yeas, 27 nays and 2 absent.

PRESIDENT EGAN: So the amendment has failed of adoption. Mr. Sundborg?

SUNDBORG: Mr. President, I have an amendment to offer.

PRESIDENT EGAN: Mr. Sundborg has an amendment to offer to Section 10. The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 10, line 22, strike the words 'the Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

SUNDBORG: Mr. President, I move and ask unanimous consent for the adoption of the amendment.

JOHNSON: I object.

MCNEES: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Sundborg?

SUNDBORG: Mr. President, this is a fairly basic matter also which I am sure is going to come before us in some other connection before we are through here. The practice in the Territorial legislature in the past has been that confirmation of appointments is by both houses in joint session assembled. I believe it has been a good practice. I don't believe that only the senate should have the right to express the people's will with respect to appointments by the executive, as it would be in this case, but that it should be by majority of all the members of the legislature and not just by majority of the members of the upper house.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: Mr. President, I wish to speak in favor of the amendment. The situation can arise, as it has in the past, where in the makeup of our senate alone, there might be a majority of attorneys as members of the senate or there may be a sufficient number of attorneys that if they wish to exert certain influence, they could act as somewhat of a damper on confirmation of the lay members of that board. I believe that Mr. Sundborg's amendment is worthy of support.

BARR: I am not going to discuss it very widely, but I would say that I don't know what may happen in the future. The only thing I can do is judge by what has happened in the past. I have never been in the senate when there was a majority of attorneys. But I remember distinctly when there was a time when there were 14 attorneys in the house out of 24.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I am a little concerned. I think the confirmation of the lay members of the judicial council should be the same as the confirmation procedure which will be uniform throughout our governmental structure. Now I don't know what the body has in mind or whether the constitution could contain a blanket clause to the effect that when the language "subject to confirmation" is used that means subject to confirmation by the members of both houses sitting in joint session. It seems to me that Mr. Sundborg made a good point, but I don't know whether we are doing the right thing by saying "subject to confirmation by both houses sitting in joint session" and later on come up with a different motive for the general operation of the state. I would like to hear from somebody.

MCHUGH: May I ask Mr. Rivers if this might not be a general policy of the Convention to require the meeting of both houses

in joint session on issues of this magnitude or nature.

R. RIVERS: That would be fine if that were to turn out to be the fact.

HERMANN: I think the adoption of any such provision should wait upon the report of the Apportionment Committee and find out how big the house and senate are going to be. You might very well have the tail wagging the dog in this case.

PRESIDENT EGAN: The question is, "Shall Mr. Sundborg's proposed amendment be adopted?" All those in favor of the adoption of Mr. Sundborg's amendment will signify by saying "aye", all opposed "no".

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 28 - Armstrong, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hellenthal, Hilscher, Hinckel, Hurley, Kilcher, Lee, McCutcheon, McHealy, McNees, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, Smith, Stewart, Sundborg, VanderLeest, White, Mr. President.

Nays: 25 - Awes, Barr, Boswell, Coghill, Cross, Gray, Harris, Hermann, Johnson, King, Knight, Laws, Londborg, McLaughlin, Metcalf, Nerland, Nolan, R. Rivers, V. Rivers, Robertson, Rosswog, Sweeney, Taylor, Walsh, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 28 yeas, 25 nays and 2 absent.

PRESIDENT EGAN: The "yeas" have it and so the proposed amendment has been adopted. Are there other amendments to Section 10? If there are no further amendments, we will proceed --

STEWART: Mr. President, may we have that read as it was amended?

CHIEF CLERK: "Line 22, page 3, strike the words 'The Senate' and insert in lieu thereof the following: 'a majority of the members of the Legislature in joint session assembled'."

PRESIDENT EGAN: Are there other amendments? We will proceed with Section 11. Mr. Coghill?

COGHILL: Mr. President, Section 10, I have an amendment that

I am contemplating on proposing. However, first I would like to hear discussion by the Convention as far as the subject of confirmation by the legislature in joint session assembled, as far as the attorney members of these boards are concerned. I feel that we are going to be setting up a precedent here that all professional boards will be chosen by their given profession and a minority will be picked by the nonprofessional group and confirmed by the elected members of the electorate for Alaska, but in turn the professions of the doctors, lawyers, and dentists and all the rest of them are going to have the chance to load the committee with professional people.

PRESIDENT EGAN: Mr. Coghill, the Chair has been lenient in allowing discussion even through there was no motion on the floor, owing to the fact that questions have been asked. The Chair will have to ask that these discussions be confined to matters before the Convention.

COGHILL: Well-I'll submit a proposal then, Mr. Chairman.

CHIEF CLERK: "Line 18, page 3, after the word 'bar' insert a comma and add the following: 'subject to confirmation by the Legislature in joint session assembled'."

COGHILL: Mr. President, I move and ask unanimous consent for the adoption of this amendment.

BUCKALEW: Objection.

COGHILL: I so move.

KILCHER: I second the motion.

PRESIDENT EGAN: Mr. Kilcher seconded Mr. Coghill's motion. Will the Chief Clerk please read the proposed amendment again.

CHIEF CLERK: "In Section 10, line 18, after the word 'bar' insert 'subject to confirmation by the Legislature in joint session assembled'."

PRESIDENT EGAN: Add a comma.

SUNDBORG: I wonder if I might ask Mr. Coghill if he would consent to a proposed change in his amendment which would not change the sense but I believe would be a little smoother. If on line 22, after the word "article" we change the comma to a period and then insert "both the attorney and nonattorney members shall be". It would then read, the new sentence, would say "both the attorney and nonattorney members shall be subject to confirmation by majority."

COGHILL: Mr. President, I consent to that with consent of my second because it does not change the intent of my amendment.

PRESIDENT EGAN: Mr. Coghill, it might be more in order if you ask that your original amendment be withdrawn and then submit it. There will be no confusion in the minds of the delegates when we vote on it, if that is what you are attempting to accomplish.

COGHILL: Yes, that's right. I will so move and ask unanimous consent that my proposed amendment be withdrawn.

PRESIDENT EGAN: Mr. Coghill asks unanimous consent that his original proposed amendment be withdrawn. Is there objection? Mr. Riley?

RILEY: I object for purposes of comment. It would appear to me to be far more expeditious to act on it as first offered. Otherwise we are going to introduce the complication of, do we rescind our former action to put the show on the road. This could all be reconciled in Style and Drafting later if Mr. Coghill's motion is adopted.

SUNDBORG: I agree with that, Mr. President, and withdraw my suggestion.

PRESIDENT EGAN: Mr. Sundborg then asks unanimous consent that his motion be withdrawn. If there is no objection it is so ordered and we have Mr. Coghill's original motion before us. Mr. McLaughlin.

MCLAUGHLIN: I presume Mr. Coghill submitted this motion merely for the purpose of getting this on the floor. Coldly and calculatingly, if this motion is passed you might as well tear up the whole proposal and provide for the election of juries, because then it would be more efficacious and more democratic. The whole theory of the Missouri Plan is that in substance, a select and professional group, licensed by the state, can best determine the qualifications of their brothers. The intent of the Missouri Plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects and the qualifications of their brothers. It is unquestionably true that in every trade and every profession the men who know their brother careerists the best are the men engaged in the same type of occupation. That was the theory of the Missouri Plan. The theory was that the bar association would attempt to select the best men possible for the bench because they had to work under them. If you require a confirmation of your attorney members you can promptly see what will happen. The selection is not then made by the organized bar on the basis of a man's professional qualifications alone. The determination of the selection of those people who are on the judicial council will be qualified by the condition, are they acceptable to a house and a senate or a senate alone, which is essentially Democratic or essentially Republican. No longer is the question based solely on the qualificat

of the candidate for the bench. The question is, will those people whom we set up here on the judicial council, that we send from the bar, will they be acceptable in terms of political correctness? If political correctness enters into the determination of the selection of those professional members who are to be placed upon the judicial council, the whole system goes out the window. All you have is one other political method of selection of your judges. The theory, and it is the only way it can possibly work, is that the lawyers are put on there to get the best man and not to take a man on the basis of his politics. But if we require confirmation, then the material consideration to be made by the Alaska Bar Association is, are we sending our best representative -- no. But are we sending a good Democrat acceptable to both members to both houses or are we sending a good Republican acceptable to both houses. If we permit that determination to enter into our consideration, then in substance we should provide for an initial election or initial appointment by the governor or some other body. Qualifications go out the window as soon as you have confirmation. The theory on the lay members on the confirmation, they represent the public and they represent the predominant political thought. The theory on the lawyer members of the council, they represent the profession, they represent the best interests of the profession. They represent a desire to have the best judges on the benches. I beg of you, please don't vote for the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I want to heartily second the remarks of Mr. McLaughlin but also want to point out that the purpose of the draft as now written is to have a nonpartisan selection of these lawyer members, and the minute you adopt something like this, you are making a partisanship proposition out of it. We want that to carry through to a nonpartisan selection of judges, so I think our thinking is quite clear.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: In bringing this up, I quite agree with both the Chairman of the Judiciary Committee and also the member. I believe that all of us here are working on committees real hard and we are trying to bring out good and concise thoughts. We are not trying to go to the extreme in our committee proposals, so that we will get a compromise on the floor. I don't think that is the intent. The purpose for this amendment is that I foresee that the nonattorney members of this board are going to be subject to all the ills of political skulduggery on the floor of the senate or the joint house assembled, and I see that if we are going to pick the judges on nonpartisan basis, that it should be left up to your representative of the government, the highest official in the executive branch which is your governor. That is the reason

why I voted for the amendment to strike that, the acceptance or confirmation by the senate. I think if we are going to accept some of them by the senate confirmation, we should accept them all. It is the precedent you are setting up here for boards on the professional level.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Coghill's proposed amendment be adopted by the Convention?"

ROBERTSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result

Yeas: 4 - Coghill, Kilcher, Londborg, Mr. President.

Nays: 49 - Armstrong, Awes, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 4 yeas, 49 nays and 2 absent.

PRESIDENT EGAN: So the proposed amendment has failed. Are there other amendments to the section?

TAYLOR: I have one.

PRESIDENT EGAN: Mr. Taylor has a proposed amendment.

TAYLOR: Mr. President, I am proposing this amendment to Section 7.

PRESIDENT EGAN: Mr. Taylor offers a proposed amendment to Section 7. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 2, page 3, after the word 'State' strike the balance of the section and insert 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

TAYLOR: I ask unanimous consent for the adoption of the amendment.

SUNDLORG: Objection.

TAYLOR: I so move.

METCALF: I second it.

PRESIDENT EGAN: Mr. Metcalf seconds the motion of Mr. Taylor. Mr. Taylor?

TAYLOR: I would like to mention one thing. The matter was brought up and we have argued this thing quite thoroughly. I felt that it might be of the period of time that would elapse. Now in the last three years we have admitted perhaps 50 attorneys to the practice of law in Alaska, and it seems like there are going to be quite a number of them admitted each year from now on. Now this past year we had 25 who took the examination, the year before 19, so those men who in the past couple of years have taken the bar and have been admitted to the bar, in all probability by the time we achieve statehood will have the required residence of three years, and they have been practicing law for three years, which will make them eligible for the bench. It seemed the opinion of some of the proponents to eliminate the five-year period. It was through the fact there might not be sufficient manpower, but I think that would be taken care of. Now, even putting the best light on it, we cannot anticipate we will have statehood for a year and a half or possibly more. I think I am being unduly optimistic when I say a year and a half. These men who are barred by time, that will be taken care of, as immaturity is always cured by the passage of time, and by three years we will have plenty of attorneys to pick for the judiciary. We feel there should be some restriction instead of dragging a man in from the outside and putting him on the bench, not knowing his qualifications or background, I think we should put at least three years because by that time there will be approximately 60 or 70 more lawyers in Alaska who will be judicial timber. I feel this amendment should be adopted.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I rise to speak against the amendment on the same basis that I rose to speak against the original article as it was originally turned out in the Judi[illegible]y Committee. Feeling that it is not a matter of constitutional law but one of legislative law, therefore I oppose the amendment.

PRESIDENT EGAN: Mr. Gray.

GRAY: Will you have the Chief Clerk read the amendment again?

PRESIDENT EGAN: The Chief Clerk will please read the amendment.

CHIEF CLERK: "Section 7, page 3, line 2, after the word 'State', strike the balance of the section and insert, 'for at least three years and have been residents of the State for at least three years next preceding their respective nominations; provided, that additional qualifications may be prescribed by law.'"

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" Mr. Marston?

MARSTON: Mr. Chairman, I want to talk on this. I wish we would quit going back. We settled this. We are never going to get through.

TAYLOR: Point of order. He is not speaking on the subject.

MARSTON: We have passed on this. We have given our reasons.

PRESIDENT EGAN: Mr. Marston, under the circumstances, Mr. Taylor's point of order, if you say we have passed on this, will have to be well taken because we did not pass on the question that is before us at the present time.

MARSTON: No new subject matter is brought up here.

PRESIDENT EGAN: Mr. Marston, the Chair will have to hold that Mr. Taylor's point of order is in order because there is new subject matter here.

MARSTON: May I say I am opposed to this amendment?

PRESIDENT EGAN: That is right. Mr. Barr.

BARR: May I say I am in favor of this amendment? In answer to another member who took the floor a minute ago, he said that this was properly a legislative matter. I believe that certain qualifications should be specified by the legislature, but I believe that the constitution should state the basic law and preserve the rights of the people, and the people should be entitled to a judge who is properly qualified. That does not just mean qualified in the law. It means also qualified by various other types of experience, including experience in Alaska.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall Mr. Taylor's proposed amendment be adopted by the Convention?" All in favor of the -

MCCUTCHEON: Call the roll.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 20 - Armstrong, Barr, Boswell, Coghill, Cross, Gray, Harris, Hellenthal, Johnson, King, Laws, McCutcheon, Metcalf, Nolan, R. Rivers, V. Rivers, Robertson, Sweeney, Taylor, Walsh.

Nays: 33 - Awes, Buckalew, Collins, Cooper, Davis, Emberg, V. Fischer, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee, Londborg, McLaughlin, McNealy, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, Rosswog, Smith, Stewart, Sundborg, VanderLeest, White, Wien, Mr. President.

Absent: 2 - Doogan, H. Fischer.)

CHIEF CLERK: 20 yeas, 33 nays and 2 absent.

PRESIDENT EGAN: And so the proposed amendment has failed to pass. Are there other amendments? Mr. Sundborg?

SUNDBORG: Mr. President, may I be permitted to address a question to Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, Mr. Sundborg.

SUNDBORG: Mr. McLaughlin, is it really necessary to provide at the end of Section 10 this language saying that the members of the judicial council "shall be compensated as provided by law"? It occurs to me that we have no such language, for instance, covering the compensation of the judges at all or of any other officials.

MCLAUGHLIN: There is provision specifically in the Act providing for compensation for the judges, and we did not want to make it mandatory, but we wanted to put it in there because we wanted to make it expressed that they could be paid for their services.

SUNDBORG: Is it your belief that if we did not have it in here that the legislature could not provide to compensate them?

MCLAUGHLIN: We are running close. Actually, I think the legislature, even if it were not in there, could provide for their compensation. I would prefer to leave it as it is, and if Style and Drafting so recommends, after discussion with members of the Committee, we might recommend --

SUNDBORG: As Chairman of Style and Drafting, I certainly would not, for myself, want to recommend such a thing as striking that out because I believe it is substantive.

MCLAUGHLIN: I would prefer on behalf of the Committee to leave it in.

PRESIDENT EGAN: Are there other amendments to Section 10? Are there amendments to Section 11? Mr. Hellenthal?

HELLENTHAL: Mr. President, I ask unanimous consent that the word "ex officio" be stricken in the fifth and sixth lines on page 4.

R. RIVERS: I object.

HELLENTHAL: I so move.

MCNEES: I second the motion.

R. RIVERS: The word "ex officio" means that that particular seventh member of the judicial council is the member of judicial council by virtue of the fact that he happens to be chief justice, and so that when the person who occupies the office of chief justice is changed the next chief justice, because he is chief justice, becomes a member of the judicial council, so I just think it is better to leave it in there.

PRESIDENT EGAN: Mr. Rivers, if I might ask a question, by specifically stating "ex officio" and not mentioning anything about his voting power, does that take away from him the right of voting except in the event of a tie?

R. RIVERS: No, he has full membership rights and the full vote at all times.

PRESIDENT EGAN: Where would that be definitely established?

R. RIVERS: I have seen it work through the Territorial government. Governor Gruening was a member of a half dozen boards and he was a voting member. I was an ex officio member of several boards. Now unless we say, "He shall not have the vote except in the event of a tie" the ex officio member has full voting rights, so I like it the way it is.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: That was not my understanding of an ex officio member. I doubt that an ex officio member, so designated, has voting rights. I would like to withdraw my objection and ask that the word "voting" be inserted after the word "seven" in line 6, which will clearly obviate my objection.

PRESIDENT EGAN: Do you ask unanimous consent that that be included in your motion, Mr. Hellenthal?

HELLENTHAL: Yes.

PRESIDENT EGAN: Without objection, it is included in the original motion.

TAYLOR: Mr. President, I am going to object for the time being. I cannot see the use of putting in the word "voting", "the seventh voting member", because of the fact that if he is a member of the board, he has to vote. Being a presiding officer he would vote last. In case there were four votes cast in favor of him there would be no necessity -- only in case of a tie. Now ex officio in no way or intent can mean a man is not entitled to vote, if he has an office, sometimes he cannot vote, he's merely presiding but that's got to be prescribed. If it isn't prescribed, why he votes. Now the word "ex officio" does not mean to take away any rights conferred upon a member of a committee or a commission. Ex officio means by virtue of an office, the office, not the man, is actually a man. It happens to be whoever holds that office is a member--is a member of the board. That is all it means. I can't see the use of putting in the word "voting".

PRESIDENT EGAN: Is there objection to a one-or two-minute recess? If there's no objection the Convention is recessed for one or two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. What is the status of Mr. Hellenthal's amendment right now? Did you ask unanimous consent, Mr. Hellenthal, that your original amendment be withdrawn?

HELLENTHAL: Correct.

MCNEES: I withdraw my second.

PRESIDENT EGAN: If there is no objection, it is so ordered.

HELLENTHAL: I ask unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

PRESIDENT EGAN: Mr. Hellenthal asks unanimous consent that the word "voting" be included following the word "seventh" in line 6, page 4.

HELLENTHAL: Mr. President, I don't mean to be picayune but apparently in the Senate of Alaska as it is now constituted, the president who is the ex officio member of boards is not entitled to a vote. Now Robert's says if the ex officio

member is not under the authority of the society he has all the privileges including the right to vote, so the question is whether or not the chief justice under this proposal would be under the authority of the society, and I would interpret the society to mean there the seven-man supreme court. There is still a very grave question in my mind. One group here tells me that he is under the authority of the society. Another group says that he is not. If there is question why don't we leave the word "voting" in?

PRESIDENT EGAN: Mr. Hellenthal, I wonder if you would be acceptable to the proposition that this matter be turned over to the Rules Committee in conjunction with the Judiciary Committee and that they come to some determination on it and report at some later time.

HELLENTHAL: I am very happy with that suggestion.

PRESIDENT EGAN: If there is no objection Mr. Hellenthal's request will be held in abeyance until such time as a complete report is made on that subject to the Convention. Are there other amendments to Section 11 or 12? If not, are there proposed amendments to Section 13? Are there proposed amendments to Section 14? Mr. McLaughlin?

MCLAUGHLIN: Mr. Chairman, may I read into the record so that the Convention will well know that under Section 13 we did not go into minute detail concerning the functions of the judicial council, but inquiry has been made whether or not the judicial council would make budgetary recommendations to the legislature. That is specifically inherent in these recommendations. Matters such as court structures would include budgets. Administration of the court would include budgetary recommendations to the legislature.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I would like to ask a question of Mr. McLaughlin. I would also like to have the answer read into the record. Is it intended that the judicial council shall also make studies and recommendations of the lower courts and see if they can get from our present system some considerable more semblance of order or procedure?

MCLAUGHLIN: That would be specifically intended under such a phrase as including such matters as court structure.

PRESIDENT EGAN: Are there amendments to Section 13? Amendments to Section 14? Are there amendments to Section 15? Are there proposed amendments to Section 16? Mr. Gray.

GRAY: Mr. Chairman, I would like to ask the Chairman of the Judiciary, in Section 15, where the judges, "...at the age of

70, on such retirement pay as may be prescribed by law, and shall render no further service on the bench, except for special assignments as provided by court rule." What do you mean by that phrase?

MCLAUGHLIN: That was intended. The presumption is that at sometime the Committee decided that age 70 is about the time that men may become subject to the infirmities of age and it would be just as well to have that as the arbitrary time at which they retire. As for special assignments, it is fair to presume that at some time in Alaska we will have a Mr. Justice Oliver Wendell Holmes who was quite effective at the age of 92 or we might have a Cardozo, where their services and experience would be of great benefit to the state, then the exception could be made to utilize those men for special assignments.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we often encounter occasions when the docket gets overly crowded and if you could recruit an experienced jurist who doesn't happen to be infirm, --it's pretty handy to have him available, if he is willing to serve. Often times leave is granted to judges for particular persons and one of these men could be made use of during such periods.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Could I ask a question of Mr. McLaughlin?

PRESIDENT EGAN: If there is no objection, you can direct your question.

COOPER: Mr. McLaughlin, again do I understand that in line 25 on page 5 and the first two lines on page 6, "The basis and amount of retirement pay for justices and judges who retire or are retired at an earlier age shall be prescribed by law." Does that mean that they can retire themselves at the age of 60 if they decide they want to go into retirement and that they will be provided with a form of retirement pay if they are the ones that elect to retire?

MCLAUGHLIN: That means that the legislature can determine exactly what retirement provisions are, that is what retirement is and they can make an allocation of one dollar a year or 30,000 dollars a year, but they shall lay down the rules as to what retirement is, and what constitutes it.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, I would like to direct a question to Mr. McLaughlin.

PRESIDENT EGAN: Without objection, you may direct the question.

MCCUTCHEON: In other words, a mandatory retirement of 70 years does not obviate the possibility that the legislature may set a lower retirement age?

MCLAUGHLIN: That is true.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, we have fixed a compulsory retirement age at 70. Reading of this article shows that the judicial council may recommend earlier retirement for judges who are infirm and may not have the capacity to continue performing their services. In some instances a person will get fairly stubborn and he will not resign. We have a forced retirement on account of infirmities prior to age of 70 based on action of the judicial council, or recommendation of judicial council, or if it happens to be a member of the supreme court it would be on the recommendation of a board of three persons appointed by the governor to investigate the matter and with retirement by the governor, but I think that the legislature could not retire judges on a compulsory basis earlier than 70 if we spell 70 in here.

MCLAUGHLIN: Mr. Rivers, the State of Maine--I was answering Mr. McCutcheon, State of Maine has a provision that no provision for retirement as such, but it provides that if you are not off the bench when you are 70 you won't collect any pay. So in effect the legislature could provide if you are serving on the bench after the age of 65, their act concerning retirement benefits would be ineffective, that you would waive all rights to them and in that sense the legislature could so provide.

R. RIVERS: In that sense I will concur.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: I would like to address a question to Mr. McLaughlin.

PRESIDENT EGAN: If there is no objection Mr. McNealy, you may ask your question.

MCNEALY: Mr. McLaughlin, have you and your Committee checked into the number of states that do provide for retirement pay for state judges?

MCLAUGHLIN: We did check on it, but we left the matter entirely to the legislature. There was some discussion whether or not we should provide a definite mechanical or arithmetical figure, and the Committee wholeheartedly decided that was a

matter that should be left to the legislature. In terms of constitutional provisions for retirement, New Jersey retires at 70 without a right of special assignment. Connecticut, New York, New Hampshire at 70, Missouri at 75 and Louisiana at 80. They set them forth, I believe, in their constitution. The statutory limit for retirement age is generally set at 70. Hawaii for instance, under their constitution, retires at 70 under Article 5, Section 3.

V. FISCHER: I would like to know whether the term "retire" or "are retired" includes defeat at an election. For instance, assume that a justice has served for 25 years and then at the age of 68, he is defeated at the polls when he comes up for reconfirmation. Would he be precluded by the term "retire"?

MCLAUGHLIN: Mr. Chairman, these are curbstone opinions, but the legislature could determine that a justice who had served so many years and then was defeated for reelection could be retired and use the expression under the constitution and so provide for it. These are outside limits that we are setting on the activities of judges.

PRESIDENT EGAN: Are there other amendments to -- Mr. Hellenthal?

HELLENTHAL: I worry somewhat about the words "except for special assignments as are provided by court rule." It seems to me I have heard of abuses in this regard. Perhaps the word "temporary" should be inserted before the word "special". Here we will have the rule-making body, which will have a tendency to recognize that their mental abilities will continue unimpaired after 70. They will all be convinced of it in fact. They are going to make the rule and they might keep themselves on indefinitely under the guise of special assignments. I ask Mr. McLaughlin if the word "temporary" might not preclude that possibility.

MCLAUGHLIN: Mr. Chairman, it is the belief of the Committee that that is mere legislation. The age of 70 was specifically set forth so there would be no embarrassment on retiring a person. If there is an abuse of the special assignment privilege, I might point out the legislature controls the purse strings and if it is abused, there will be no appropriation for the purpose. It is something that we should not necessarily anticipate or write into our constitution.

HELLENTHAL: I do not favor enacting legislation by cutting off appropriations and I therefore ask unanimous consent that the word "temporary" be inserted prior to the word "special" on line 24.

PRESIDENT EGAN: Line 24, on page 5?

HELLENTHAL: Yes.

PRESIDENT EGAN: You ask unanimous consent?

R. RIVERS: I object for a question.

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

R. RIVERS: I would say it would be better to substitute the word "temporary" for the word "special" and not put them both in.

HELLENTHAL: I consent to that.

PRESIDENT EGAN: Then if there is no objection -- Mr. Davis?

DAVIS: I would object to that. I like it the way it is.

PRESIDENT EGAN: Your objection is heard. Do you so move, Mr. Hellenthal?

HELLENTHAL: I so move that the word "temporary" be inserted in lieu of the word "special" in line 24.

PRESIDENT EGAN: Mr. Hellenthal moves and asks unanimous consent that his proposed amendment be to insert the word "temporary" prior to the word "special" in line 24.

JOHNSON: I object to the unanimous consent.

R. RIVERS: Did you say instead of the word "special"?

PRESIDENT EGAN: The Chair understood that Mr. Hellenthal had changed his mind but the Chair was probably in error.

HELLENTHAL: No, that incorporates Mr. Rivers' suggestion which was, as I interpret it, that "temporary" be substituted for the word "special" and I did not ask unanimous consent but merely moved that the change be made.

POULSEN: I second it.

PRESIDENT EGAN: Mr. Poulsen seconds the motion. Mr. Gray?

GRAY: I would like somebody to explain to me the difference between these two proposals.

PRESIDENT EGAN: Mr. Hellenthal, would you explain the difference?

HELLENTHAL: Yes, the special assignment is limited to a temporary one now, whereas under the former wording a special assignment could go on for ten years and could be used as a guise for increasing the tenure of the judges by the exercise of their own rule-making power.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I see what Mr. Hellenthal is driving at, but I am afraid the mere change of the word "special" to "temporary" would not accomplish his purpose because "temporary" is almost synonymous with "indefinite". It is an amount of time. If we are going to burden the constitution with such things, it is useless. Either we forget about the matter entirely or specify it further.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I realize that the cases are special and possibly unusual, but there have been many, many cases of very exceptional judges who were well beyond 70 years. I think it is unwise in the constitution to make it impossible for such judges to serve their state. After all, they have all of the experience of their years of service on the bench. Now personally I am against the 70-year retirement age, but the Committee has gone over that back and forth, one way or the other, and I am not going to raise an objection that way, but I would certainly like to see it provided in the constitution so that in the event we have a person who is physically and mentally capable to be a Judge, and in the event we have crowded dockets and we need to assign somebody to help clear up the docket, that we have the power to do so. And if we say "temporary" that means, I suppose, just what it says -- temporary. You could not assign a man to do a job that needed to be done if it was something more than temporary. For that reason I like the language as is, "for special assignments".

PRESIDENT EGAN: Is there further discussion?

NOLAN: Question.

PRESIDENT EGAN: If not, the question is, "Shall Mr. Hellenthal's proposed amendment be adopted by the Convention?" All in favor of the adoption of the proposed amendment say "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments to Section 15? Mr. Taylor?

TAYLOR: I have an amendment.

CHIEF CLERK: "Amend Section 15 by striking the following words: On line 22, page 5, 'at the age of 70'."

PRESIDENT EGAN: What is the pleasure?

TAYLOR: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Taylor moves the adoption of the proposed amendment. Is there a second to the motion? Hearing no second --

HELLENTHAL: I will second the motion.

PRESIDENT EGAN: Mr. Hellenthal seconds the motion. The question is, "On line 22, page 5, shall the words 'at the age of 70' be deleted from the section?"

BUCKALEW: Question.

EGAN: All those in favor of the adoption of Mr. Taylor's proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the amendment has failed. Are there other amendments? Mrs. Wien?

WIEN: Mr. President, I move and ask unanimous consent that this Convention recess until 1:30 this afternoon.

PRESIDENT EGAN: Mrs. Wien asks unanimous consent that the Convention stand at recess until 1:30 p.m. Mr. Sundborg?

SUNDBORG: As announced yesterday, the Style and Drafting will meet at 12:15, in the lunchroom.

PRESIDENT EGAN: The Chair would like to state there will be no meeting of committee chairmen as had been previously announced. Miss Awes?

AWES: The Bill of Rights Committee will meet at 12:45.

RILEY: Subject to Mr. McLaughlin's views, such members of Rules and Judiciary who are free to get together during the noon hour should perhaps do so to resolve that one question we have heard.

PRESIDENT EGAN: The Rules Committee and Judiciary will meet during the noon hour. Mr. Nerland?

NERLAND: Mr. President, I request the members of the Finance Committee meet for just a few minutes immediately following recess.

PRESIDENT EGAN: The members of the Finance Committee will meet immediately upon recess. Mr. McNealy?

MCNEALY: Mr. President, I request a meeting of the Ordinance Committee, No. IV, at 12:15.

PRESIDENT EGAN: There will be a meeting of the Ordinance Committee at 12:15. Hearing no further committee announcements and no objection, then the Convention will stand at recess until 1:30 p.m. The Convention is at recess.

RECESS

legislature" in accordance with Mr. Johnson's motion of last Saturday.

PRESIDENT EGAN: Is there further debate? Mr. Cooper.

COOPER: Mr. President, this isn't debate. I merely want to ask if in Section 4 if "licensed to practice law" means the same as "admitted to the bar"?

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: That was a change made in Style and Drafting. It was generally agreed that it meant the same thing.

PRESIDENT EGAN: Does any other delegate desire to be heard on this proposal? Mr. Smith.

SMITH: Mr. President, I would like to ask Mr. Robertson a question.

PRESIDENT EGAN: You may, if there is no objection.

SMITH: I would like to know on what you base your fears. Has any such action been taken in the past?

ROBERTSON: Well, I answer that question, Mr. President, by stating that is my personal thought on the matter, but I can't believe that Congress is going to agree to a proposal that submits to a mass vote the question of jurisdiction of the courts. That is a matter of scientific investigation and you can't campaign on that kind of an issue before the people. That is something that a small group of people, of men and women like the legislature, should give very careful thought and consideration to and decide entirely on a nonpolitical basis.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I am going to certainly vote for this. I think this article is a very fine coverage of the Judiciary and represents the best in thinking and experience. Along these thoughts expressed by Mr. Robertson, I propose to advocate something under initiative and referendum whereby the jurisdiction of the courts shall not come under the initiative or referendum.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, I could probably talk for two or three hours and there is ample material to talk against this bill for two or three hours or two or three days. I am going to be brief

and I hope that the proponents of the bill will find a way in their speaking so that they can be as brief as I intend to be. In fact, I could sum up all I have to say in two words, "no good". I do want to just hit a few of the high spots in this matter, though. It has been amusing to me to hear delegate after delegate come on the floor and talk about the rights of the people. They want to give the people this right; they want to give them the initiative and referendum; when it suits the purpose of the delegate speaking, then he is interested in the rights of the people. When it doesn't suit his purpose, then he doesn't believe the people should have the right. I think that is a foregone conclusion that in the Convention here, which has served its purpose not only in this, but in other matters that have been before the body. Now, if we are going to give the people any rights, we have gone along under this appointive judge system as far as Alaska is concerned since the beginning of the Territory; we want to give the people some rights; then give them the right to elect these judges because after all these judges are the people who are going to judge the people. This way the people, in no way you read it, or no matter how you state it, this article does not give the people any rights in regard to appointing these judges. The most ridiculous thing would be statements of the proponents of this bill that while these judges have to run against their records and the people have something to say. Well, it is an old maxim among lawyers that judges never die and seldom retire, and so you are not going to get rid of them that way, and when they run against themselves, the greatest way to get them elected would be a little bit of opposition by a group. Supposing the bar association, the attorneys, knew that a judge was bad and wanted to get rid of him. If I were a judge, just before I was ready to run for re-election or to run against myself I would get the bar association good and burned up at me and ask them to come out in the papers against me and then the general public would vote me back in by probably the biggest vote that was ever cast in that particular type of election. We get into a matter that they say is nonpolitical. It is nonsense to say it is nonpolitical. It is the most political situation and fraught with all sorts of elements which make for politics here. You start out with three laymen appointed by the governor. Now, regardless of the governor, what party politics he has, he is going to certainly name the three laymen that are friendly to him, and in addition they are obligated to the governor for his appointment or for their appointment. Then when it comes to nominating the various judges, don't think the governor is not going to have something to say with these three laymen. Then we get down to the four lawyers, etc. Now these four

lawyers are going to make it a nonpolitical situation -- maybe that is the idea -- three lawyers chosen by the bar association. I am a member of the Alaska Bar Association; I should say that all are hearts and flowers in the Bar Association; no politics are going to be involved there. I hesitate in belonging to this closed corporation of union of attorneys, I don't want to comment too much on the politics that does and can go on within that body. But if you think that politics isn't going to be played with the Bar Association -- I grant the fact that the Bar Association is not going to stand for picking out some ignorant and inexperienced attorney and putting him up as one of the representatives They are going to undoubtedly pick out good men, men with knowledge of law, but lawyers have politics, too, you know They are Democrats and Republicans, and while the law is a jealous mistress, politics is also a jealous mistress, and any attorney who is a Republican and there is a Republican that he can see is going to be nominated and put in as a judge, he is certainly going to work toward that end. We get into the situation where you are going to have four lawyers including the chief justice controlling this judicial council, and I say this to you laymen in all fairness, that in my opinion four lawyers should be able to control this judicial council; but let's remember the chief justice is going to owe his appointment to the governor. He is going to owe obligations to the governor. All the governor is going to have to do, if he can control the chief justice and the three laymen, he makes all the appointments; if the bar association can control the chief justice and the three lawyers on this judicial council, they are going to make all the appointments. I sincerely hope that this judicial plan, as we have here, is considered seriously. The elective plan of judges has worked successfully in the states, all reports not to the contrary. We have had an offer here of something new, something different from the Committee, and, I am sorry to say, the lawyers have been carried away with the plan. My main purpose in speaking against it now is not because I believe that anything that I say is going to influence one single vote upon this floor, but I do want the members of this Convention, when you see politics in future years to come, if this constitution goes into effect, I want it remembered at least that I made the statement here when you see politics mixed up in your judges and the possibility of a Pendergast machine being set up here in the Territory, this Missouri Plan we have certainly makes it very possible, and at that time I will want to always remember, and thank the delegates for this, that they made it possible to amend this constitution fairly easy, at least within ten years after it is adopted, we will have a chance to amend this Missouri Plan out from the body of an otherwise good constitution. I would hope against hope that this judicial article would be forced to crawl back into the burrow from whence it came.

PRESIDENT EGAN: Is there further debate? Does any other delegate wish to be heard on this subject of Committee Proposal No. 2?

McCUTCHEON: Question.

PRESIDENT EGAN: If not, the question is, "Shall Committee Proposal No. 2, the article on the judiciary, be adopted as part of the Alaska state constitution?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Collins, Cooper, Cross, Davis, Doogan, Emberg, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Lee, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Reader, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 6 - Coghill, Knight, Laws, Londborg, McNealy, Poulsen.

Absent: 2 - Buckalew, Riley.)

PRESIDENT EGAN: Mr. McCutcheon

McCUTCHEON: Mr. President, I change my vote from "no" to "yes", please.

PRESIDENT EGAN: Mr. McCutcheon changes his vote from "no" to "yes".

CHIEF CLERK: 47 yeas, 6 nays and 2 absent.

PRESIDENT EGAN: So the "yeas" have it and the article on the judiciary has become a part of Alaska's state constitution. Mr. Sundborg.

SUNDBORG: Mr. President, I am wondering, in accordance with our rules is that now referred back to Style and Drafting for placement in the final constitution?

PRESIDENT EGAN: That is correct, Mr. Sundborg. Mr. Sundborg, did you wish the floor at this time?