

ALASKA LEGISLATURE COMMITTEE FILES 1983-1984 86/2

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standard 1.1 selection*

- A. The prosecutor shall be a locally-elected official.
- B. The term of the office of prosecutor shall be at least four years.
- C. The office of prosecutor shall be approached as a career position.

* *Task Force II feels that because of small jurisdictional size, the election should be non-partisan, with incumbent designation. The term of office should be at least six years, and the position should be approached by candidates, the public and current office holders as a career position.*

standard 1.2 qualifications*

- A. The prosecutor must, at time of filing for election and for the duration of his term of office, be a member of the bar in good standing, be a resident of the jurisdiction, and be otherwise qualified to run for and hold office under state statutes.

* *Because of various degrees of available candidates in different jurisdictions, Task Force I advocates that candidates be residents of the state for at least six months; Task Force V states that candidates be in good standing with the bar for at least two years prior to election for office; and Task Force VI feels that candidates should be practitioners of law for at least five years prior to filing for election for the office of prosecutor.*

standard 1.3 responsibilities

- A. The office of the prosecutor shall be a full-time profession. The prosecutor shall neither maintain nor

profit from a private legal practice. In those jurisdictions unable to justify the employment of a full-time prosecutor, the prosecutor may serve part-time until the state determines that the merger of jurisdictions or growth of caseload necessitates a full-time prosecutor.

The prosecutor shall devote primary effort to his office, and shall have no outside financial interests which could conflict with that duty.

- B. The prosecutor shall represent the case of the people as to both civil and criminal jurisdiction. The criminal representation shall be the primary responsibility. In jurisdictions where civil and criminal responsibilities are vested in the prosecuting attorney, provision for alternative representation in the case of conflicts should be made.
- C. The duties of the prosecutor's office shall be conducted in a professional and non-partisan manner.
- D. The prosecutor should consider all available models of control of human behavior from the standpoint of the ultimate benefit to society. The prosecutor should at all times be zealous in the desire to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion in individual cases and in the approach to the larger issues of improving the law and making the law conform to the needs of society.

Task Force I & II:

The prosecutor should be willing to represent the consensus in the community even if it differs from personal points of view.

Task Force IV:

It is the duty of the prosecutor to enforce the laws as written by the legislature and upheld by the courts, within the legal, discretionary powers of screening and diversion. Until such time as specific laws are changed by legislative or judicial action, the prosecutor shall enforce such laws, whether the prosecutor personally agrees with them or not.

standard 1.4 compensation

- A. Mechanisms should be established for provision of

compensation commensurate with the responsibility and importance of the office of prosecutor.

B. Determination of an appropriate level of salary for the prosecutor should include reference to and consideration of:

1. Salary levels of positions with analogous responsibilities in private firms and industry;
2. Salary levels of United States attorneys and chief trial judges of the jurisdictions; and
3. Population of the jurisdiction of the prosecutor, including seasonal fluctuations, correctional population, and other relevant considerations.

C. The salary of the full-time prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction of the district of the prosecutor. The salary of the part-time prosecutor shall be set by a professional compensation board at the state level.

D. A mechanism should be established for in-term review of the prosecutor's salary in reference to changing economic conditions. Review should take place more than once per term.

E. A program of benefits, including health and pension provisions, should be established to complement the salary of the prosecutor and be at least equal to that provided to members of the state judiciary.

standard 1.5

disciplinary sanctions

A mechanism should be established to enable the legislature or court of highest appellate jurisdiction to suspend, remove, or supersede a local prosecutor upon a demonstration, after reasonable notice and hearing, that the prosecutor is incapable of carrying out the duties of his office.

A. Disciplinary Initiation:

Such suspension, removal or superseder should be initiated by the appropriate professional body, in a proceeding designed to safeguard the rights of the prosecutor.*

B. Disciplinary Rationale:

Such proceedings should be initiated only for just and serious cause, including:

1. Disbarment
2. Conviction of a felony, or a crime involving public corruption
3. Mental incompetency and/or physical disability which would prevent performance of the duties of prosecution
4. Willful neglect of duty

* *Task Force V feels that the appropriate body would include either the Governor or the Attorney General in initiating proceedings.*

commentary

SELECTION

Popular election is the most common method of selection of prosecutors: "The historical traditions of the demand for decentralized administration of criminal justice had led to the almost universal practice of electing local prosecutors. . . ." ¹ "In choosing a method of selecting a prosecutor, most jurisdictions have determined that the advantages of popular election of chief prosecuting attorneys outweigh any disadvantages."² Local election of prosecutors

. . . increases the likelihood that the prosecutor will be responsive to the dominant law enforcement views and demands of the community. Since he is not dependent on another official for reappointment, the prosecutor possesses a degree of political independence that is desirable in an officer charged with the investigation and the prosecution of charges of bribery and corruption . . . The election of local prosecutors is engrained in our political traditions. Moreover, experience in several large cities has shown that the elective process can produce dedicated career prosecutors who are highly professional and competent.³

Prosecutors are elected officials in 45 states.⁴ This elective status is determined by constitutional provision in 36 states and by statute in 9 others.⁵ Delaware⁶ and Rhode Island⁷ have no local prosecutors; the Attorney General handles criminal prosecutions for the State. In Connecticut the county state's attorneys are appointed by judges of the superior courts,⁸ and the prosecuting attorneys are appointed by the judges of the courts of common pleas.⁹ In Alaska, local prosecutors are appointed by the Attorney General.¹⁰ In New Jersey county prosecutors are appointed by the Governor with the advice and consent of the Senate.¹¹

Appointment of the prosecutor has sometimes been recommended as a potential method of removing the prosecutor from partisan considerations.¹² Appointment of the prosecutor, however, is not a desirable alternative. An appointed prosecutor does not have direct authority from, and responsibility to, the voters of his district. In addition, selection by appointment has other disadvantages. Appointment by the Governor or Attorney General results in the selection of the prosecutor by a central authority, and not by those (the voters) who can best appreciate what characteristics are suited to their particular jurisdiction. While appointment might be acceptable in smaller states, in larger states such appointment would be "too removed from the county or district served to be preferable to local elections".¹³

Appointment by local courts also is disadvantageous. Johnson notes:

The appointment of a prosecutor by superior court judges, as in Connecticut, is a possible alternative; but the primary function of judges does not involve a responsiveness to popular will, so that the same two fears of prosecutorial unresponsiveness and even abuse of discretion might still be aroused by this alternative.¹⁴

Norman notes in his examination of the Connecticut

system that "the influence of politics has in no sense been eliminated, only camouflaged".¹⁵ He also suggests that such appointment makes the prosecutor subservient to the judicial function, since "personnel whose re-appointment depends upon the judges they appear before cannot be expected to press their respective cases to the limit of the law".¹⁶ An analogous problem would presumably exist under any appointive system.

Non-partisan elections are sometimes recommended because they keep the prosecutor responsive to the people, but not subservient to political parties, and not "subject to the pressures and demands of partisan politics".¹⁷ Johnson's study found that "those offices that select their chief prosecutor in non-partisan elections have as little political influence as do appointive jurisdictions in the selection of deputies".¹⁸ Non-partisan selection systems are in common use as applied to judicial selection, usually through some variation of the 'Missouri Plan'.¹⁹

Non-partisan elections for prosecutor are currently used in Oregon and California. The Oregon statute provides, in part, that:

At all primary elections at which candidates for district attorney are to be nominated . . . the county clerk shall prepare and furnish a ballot entitled "District Attorney Ballot" upon which the names of candidates for the office shall be placed without any party designation. Following the name of each candidate shall be a statement, not exceeding 10 words of his qualifications and experience . . .²⁰

A similar procedure is used in the general election.

Some question exists as to the need for non-partisan election of district attorneys in all jurisdictions. Jacob's study of Wisconsin district attorneys indicated that despite the use of a partisan ballot most elections for prosecutor in that state were characterized by a lack of partisanship because many candidates ran unopposed.²¹ "From 1944 to 1962, between 31 per cent and 59 per cent of the elections for prosecutor went uncontested in both the primary and general elections".²² The result is that elections for district attorney were as non-political as non-partisan judicial elections in Wisconsin.²³ And since district attorneys generally had less previous linkage to political parties than did the more politically-experienced judges, Jacob notes: "Although elected on a partisan ballot, district attorneys are perhaps more apolitical than judges".²⁴ If the Wisconsin situation may be assumed to exist throughout the country in those areas which have a minimum of competition for the position of district attorney, then elections for prosecutor may now be operating on a *de facto* non-partisan basis in many areas.

A final question in the election of prosecutors is whether the election ballot should carry a designation of the incumbent. Such a designation is designed to increase professionalism by providing clear identification of the more experienced candidates. One method of accomplishing this is illustrated on the previously cited Oregon ballot, which allows for a brief description of qualifications. Incumbency designation is now followed in some judicial elections.²⁵

TERM OF OFFICE

The most common length of term of prosecutors is four years. Other term-length distribution is indicated in the following table:²⁶

TERM OF OFFICE IN YEARS	NUMBER OF STATES
2	11
4	32
5	1
6	2
8	1
no set term	3

Source: NDAA Prosecutors Surveys — 1976 data

Two-year terms are served by prosecutors in eleven states: Arkansas, Hawaii, Idaho, Kansas, Maine, Missouri, New Hampshire, North Dakota, South Dakota, Vermont, and Wisconsin. Three-year and four-year terms are served by prosecutors in New York. In New Jersey, county prosecutors serve five years. The district attorney in Louisiana and the commonwealth attorney in Kentucky have six-year terms. In Tennessee the district attorney general is elected to an eight-year term.²⁷ The remainder of offices and jurisdictions have four-year terms. Recommendation is made for at least a four-year term because it is considered short enough to maintain responsiveness to the electorate, but long enough for the prosecutor to be able to carry out his programs and responsibilities. Longer terms might be considered in areas wishing to provide increased incentive for candidates for the office of prosecutor. The longer term would serve to enhance the professionalism of the office of prosecutor by increasing the experience of the incumbent. Terms longer than four years have been accorded other criminal justice officers — the median term length for major trial court judges in those states which limit judges' terms is six years.²⁸

CAREER ORIENTATION

The office of prosecutor should be approached as a career position:

The advantages of career prosecutors are fairly obvious. Longevity should breed commitment to the tasks of a prosecuting career. Experience should develop the expertise necessary to avoid trial error and appeals, which are costly to the district attorney's office in time, money, and efficiency.²⁹

Increased experience in prosecution should result in a greater number of convictions and greater efficiency in criminal justice administration.³⁰

Turnover of district attorneys has commonly been high. The study of prosecutors by the NAAG reports that:

Nearly 50 percent of all respondents to COAG's 1973 questionnaire are currently serving their first term in office. Prosecutors in general are fairly young, since the median year in which all 1973 respondents were admitted to the Bar was 1958. Almost 30 per cent had been admitted since 1967.³¹

Jacob notes, in his study of Wisconsin prosecutors, that:

Most district attorneys (65.1 per cent according to election records) left the office voluntarily rather than because of an electoral defeat. Almost half (44.6 per cent) of those no longer incumbent said they left the office because they had become too

busy with their private practice, or because they felt it had impeded the growth of their private practice and income. Consequently, despite the infrequent defeat of incumbents, there is a high turnover in the office. The mean tenure of Wisconsin prosecutors between 1942 and 1963 was four and one-half years. . . .³²

Ori's study of Indiana county prosecutors discovered that only 3 per cent of those prosecutors examined intended to make a career of prosecution.³³ Engstrom's study of Kentucky prosecutors indicated that 44.7 per cent of those questioned were interested in seeking other political or governmental positions,³⁴ utilizing the office of prosecutor as a "stepping-stone" to higher office.

Lack of interest in prosecution as a career is pervasive in the prosecutor's office, not merely limited to the chief prosecutor. Felkne's study of prosecution offices in Alabama and California concludes:

There seems to be a definite lack of career orientation within the district attorney's office, despite the fact that almost all respondents reported job satisfaction in their present situations. This may be due, in part, to the failure of the district attorney to carry out any extensive recruiting program in the law schools. The responses of the deputies indicated that they gave very little, if any, consideration to prosecution work while in law school, probably due to a lack of information concerning the job and its availability. Presumably, most attorneys form set goals while they are still in law school, and the fact that district attorneys do not recruit on campuses to any great extent may well preclude any consideration of this type of law practice as a career. If an attorney later accepts a position as a prosecutor, incentive probably will be to gain experience which will facilitate the accomplishment of his previously determined goals, preventing him from viewing the district attorney's office as a potential career.³⁵

The position of prosecutor should be approached as a career position. Candidates for the office of prosecutor should not seek election to that office unless they reasonably believe that they are willing to devote to the office of prosecutor that dedication and commitment commensurate with making it a successful and lasting career. The office of the prosecutor should not be viewed simply as a stepping-stone to other political positions.

QUALIFICATIONS

Given the importance and grave responsibilities of the office of prosecutor, some minimum requirements are deemed necessary to insure that holders of the office meet minimum standards of competence. "The prosecutor has the responsibility of presenting the government's case in court, and his skill as a trial lawyer can be a crucial determinant of whether an offender is convicted."³⁶ Most states require by statute or constitutional provision that a prosecutor be a licensed attorney, and it has been held that even in the absence of such requirement there exists an inherent implication that he should be so.³⁷ New Jersey requires that appointees to the office of county prosecutor have practiced law for at least 5 years.³⁸ Pennsylvania also has a minimum practice requirement for certain metropolitan areas.³⁹ Other states have similar require-

ments.⁴⁰ Whether a specific jurisdiction will wish to establish such requirements depends on its particular circumstances. Smaller jurisdictions might elect not to adopt such requirements in order to facilitate applications for the post of prosecutor.

The responsibility of the prosecutor for representation of the state in criminal matters makes it desirable that the prosecutor have experience in the practice of criminal law, through prior experience in the prosecutor's office, if possible. This ideal will not be possible in all jurisdictions. Some jurisdictions may want to explore the possibility of certification procedures for prosecutors.⁴¹

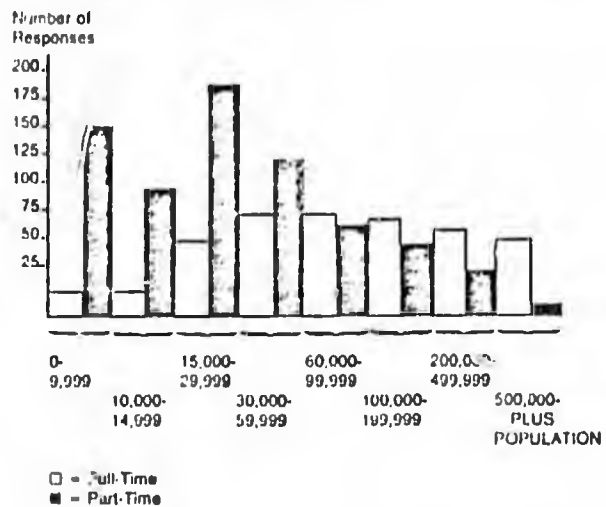
The prosecutor should also be a resident of the jurisdiction which he represents. This will not only enable the prosecutor to attain increased familiarity with the people and conditions of this area, but will also enhance the confidence of the area's population in the commitment of the prosecutor to his jurisdiction.

DUTIES: FULL-TIME

The nature and responsibilities of the office of the prosecutor demand continued and concentrated effort by the holder of that position. For this reason, it would be desirable if all prosecutors served full-time, and devoted no effort to private practice:

The complexity of today's criminal law practice requires that all prosecutors devote their full efforts to their roles as prosecuting attorneys. Part-time law practice is inconsistent with the type of commitment the community has a right to expect of its prosecutor.⁴²

Part-time service is common within the present criminal justice system.⁴³



In smaller jurisdictions the majority of prosecutors serve part-time, either for financial reasons, or because of lack of need for a full-time prosecutor in a small district, or simply because the prosecutor in that area has always served only part-time. This practice of part-time prosecutorial service may face the problem of conflicts of interest:

While direct conflicts of interest between the prosecutor's public office and his private practice are clearly unlawful and, we may assume, rare, there are many indirect conflicts that almost invariably arise. The attorneys he deals with as a public officer are the same ones with whom he is ex-

pected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealings with his private clients whose activities may come to his official attention. It is undesirable to place a prosecutor in a position in which he must always be conscious of this potential for conflict and be careful to avoid improprieties or the appearance of conflict.⁴⁴

Even where no conflict of interest arises a potential for difficulty exists:

... there is a great risk that the part-time prosecutor will not give sufficient energy and attention to his official duties. Since his salary is a fixed amount, and his total earnings depend on what he can derive from his private practice, there is continuing temptation to give priority to private clients.⁴⁵

Argument can be made that many areas of the country lack the need for a full-time prosecutor. While this may be true presently, it will not be true in the future:

The part-time system originated in the days when most county seats had only one attorney. Even now in many counties the part-time system is still probably workable, but as population centers grow the work load of the state's attorney will increase to the point that a part-time prosecutor will not be able to handle it.⁴⁶

The office of prosecutor should be a full-time occupation. The holder of the office should neither engage in nor profit from a private legal practice. The full-time requirement should not be construed to prohibit an incumbent prosecutor from participating in either legal education programs or in commission or consultant work connected with criminal justice concerns, since both of these efforts are considered unlikely to produce conflicts of interest, and each is likely to produce benefits of its own to the criminal justice system.

Practical realities dictate that some jurisdictions will be unable to justify the employment of a full-time prosecutor at the present time. Each state should consider merger of jurisdictions which would allow for employment of a full-time prosecutor, or such states should require full-time prosecution when growth of caseload necessitates such a position in those jurisdictions.

JURISDICTION

The prosecutor shall represent the case of the people as to both civil and criminal jurisdiction. This is currently the case in most jurisdictions today:

Most local prosecutors have both civil and criminal justice responsibilities. Only 12 [now 13 — Editor's Note] states assign the prosecutor solely criminal duties. In at least four others — California, Hawaii, Kansas, and Michigan — prosecutors in urban areas are divested of civil responsibilities which become the province of county or city corporation counsel.⁴⁷

A state-by-state analysis of jurisdictional responsibilities is provided in Appendix 1 — I.

In those areas where the prosecutor is assigned civil jurisdiction the majority of the prosecutor's time is spent on criminal concerns:

Prosecutors devote most of their time to crim-

inal matters: 78 per cent reported they spend over one-half of their time on criminal work. The median percentage of time on criminal matters is 75 per cent. In contrast, only 2 per cent spend over one-half of their time on civil matters.⁴⁸

Despite this, in many areas the civil duties of the prosecutor may be many, varied, and complex. This is especially true in areas where the prosecutor acts not only as criminal district attorney, but also as general city or county counsel. Many small areas simply lack the availability of attorneys to provide for both a full-time criminal district attorney and a full-time county counsel.

In some areas of prosecutorial duties civil lawsuits can be of significant importance. Civil lawsuits have some advantages over criminal actions:

... civil lawsuits give the prosecutor certain major advantages. The advantages are such that civil suits may be the only practical remedy. The potential damages are greater. Due to the lack of stigma, civil suits may lead to faster correction of the problem and resolution of the lawsuit. The prosecutor is not limited by the dictates of the Fifth Amendment so his right to discovery is more effective and meaningful and the lawsuit is more easily won.⁴⁹

In some areas, civil lawsuits are particularly advantageous:

The great advantage of the consumer fraud prosecution in such instances is that it is not criminal, but civil in nature. Therefore all methods of civil discovery, including depositions, interrogatories, admissions, and inspection and copying of business records are available to the People. In fact, because the civil penalties sought in such an action are so similar to punitive damages, the People may also discover the financial status of the defendants.

In addition, because these consumer fraud actions are not criminal certain constitutional rights peculiar to criminal actions are not available to the defendants. The defendant does not have a right to a jury trial, there is no requirement that the evidence be established beyond a reasonable doubt, but rather only by a preponderance of the evidence, nor does the defendant have the Sixth Amendment right to be confronted by the witnesses against him. Of equal importance, a criminal acquittal does not bar the civil action on the basis of double jeopardy.⁵⁰ (footnotes omitted).

Other advantages in consumer fraud prosecution include a more effective case if the defendant is a corporation, possibility of greater damages than are available by criminal fine, fewer "Sheppard" restrictions on comments or publicity, and possible avoidance of extradition problems.⁵¹

Civil suits can also be useful to the prosecutor in areas such as child support enforcement,⁵² environmental law,⁵³ and others.⁵⁴

The full-time prosecutor can serve both criminal and civil functions, and should have the responsibility for both civil and criminal jurisdiction.

PROFESSIONALISM AND NON-PARTISANSHIP

The duties of the prosecutor's office must be conducted in a completely professional and non-partisan fashion. The authority of the office of prosecutor can only be ex-

exercised in the interest of the People and not for private concerns:

The powers of a district attorney under our laws are very extensive. They affect to a high degree the liberty of the individual, the good order of society, and the safety of the community . . . Powers so great impose responsibilities correspondingly grave. They demand character incorruptible, reputation unsullied, a high standard of professional ethics and sound judgment of no mean order . . . A district attorney cannot treat that office as his selfish affair. It is a public trust. The office is not a private property, but is to be held and administered wholly in the interests of the people at large and with an eye single to their welfare.⁵⁵

Unprofessional use of the authority of the prosecutor's office for private concerns demeans the office of the prosecutor and violates the public trust and confidence in the criminal justice system. Loss of public confidence only makes the prosecutor's job more difficult and less rewarding. Partisanship may also affect the prosecutor's staff:

Highly qualified practicing lawyers and recent law school graduates may be prevented from entering the prosecutor's office because they are unable or unwilling to acquire political sponsorship. Lawyers who are considering a career in the prosecutor's office may be daunted, even if they have the required political support, by the likelihood of discharge if their party does not retain control of the office at the next election. Furthermore, the obligations usually attached to a patronage position, such as purchasing or selling tickets to fund-raising dinners, campaigning, or systematically contributing to the party, may be distasteful to many lawyers.⁵⁶

Partisanship can also adversely affect the general conduct of the prosecution function:

Political considerations make some prosecutors overly sensitive to what is safe, expedient, and in conformity with law enforcement views that are popular rather than enlightened. Political amputation does not encourage a prosecutor to take the

risks that frequently inhere in reasoned judgments.⁵⁷

The prosecutor must strive to conduct his office and his duties in a completely professional and non-partisan way, exercising the powers and authority of his position for the interest of the People and not for any private or personal concern. To do otherwise is a violation of his responsibility and his electoral mandate.

COMPENSATION

Provision of an adequate salary is an absolute necessity if the office of prosecutor is to function at maximum efficiency. An adequate salary is essential for attracting capable candidates to the position of prosecutor:

High quality attorneys who should be encouraged to seek the position will do so only if it offers reasonable economic rewards. Full-time devotion to duty cannot be demanded unless the pay is raised and salary scales are based on the assumption that the prosecutor will not have a second income from outside law practice.⁵⁸

"If public service careers are pursued in an austere setting on depressed salaries, few talented people will be attracted to local prosecutorial service and experienced attorneys will seek other employment."⁵⁹ Failure to provide adequate salaries has resulted in a lack of prosecutorial candidates, as illustrated by the example of Oklahoma:

In that state, as in some others, archaic legal limitations prevented payment of compensation which would attract competent lawyers, and the administration of criminal justice suffered. This reached crisis proportions when, in 1964, no attorneys sought election as County Attorney in 55 of the state's 77 counties.⁶⁰

Subsequent to this, Oklahoma reorganized its prosecutorial system. Other states have faced similar problems. In Kansas, in January 1975, in 29 out of 101 counties the candidate for prosecutor chose not to seek re-election. In 89 counties the candidate for prosecutor ran unopposed.⁶¹ Many jurisdictions face difficulties enough in attracting candidates for prosecutor without having to contend with low salaries. Jacob notes that in Wisconsin "the pool of potential candidates is quite small: eighteen

Jurisdiction	Reason For Leaving		Nature of New Employment									
	Discharged (%)	Retirement (%)	Death (%)	Sickness (%)	More Money (%)	Other (%)	Indiv. Practice (%)	Estab. Firm (%)	Law Firm (%)	New Law Corp. (%)	Gov. (%)	Other (%)
Los Angeles	1.3	5.2	2.6		63.6	22.1	50	16				34
Detroit	5	50			45		30	30	20		10	10
Brooklyn	1	32	4		63		65	17	11	2	5	
Cleveland			22		33	45		66			34	
Houston	2		2		96		20	50	20		10	
Bronx		11.5			88.5		24.5	8.5	5.5	2.5	59.0	
Miami	5	5			80	10	50	50				
Buffalo					70	30	40	30	20	20	10	
St. Louis	10		5		70	15	15	60	10		15	
Phoenix					100				90		10	
Cincinnati					100							
Baltimore					90	10	5	90	5			
Sacramento					10	90		50			50	
Atlanta		50			50		25			25	50	
Crown Point		10	10		80		75	10	5		10	
Portland	6				34			59	10			
Denver					15	30	20	44		12	24	
St. Paul					100			40	40		20	

counties in 1965 had fewer than 10 active attorneys".⁶² Provision of an adequate salary is thus crucial to guaranteeing the existence of sufficient qualified prosecutors.

Provision for an adequate salary level is also essential to reduce the rapid turnover of local prosecutors.⁶³

Turnover among prosecutors is one of the major problems which limits the development of prosecutorial expertise. The major reason cited for leaving the job is failure of salaries to meet the level which attorneys can reach in private practice.⁶⁴

"Turnover in prosecutor's offices far exceeds that in any other government office dealing with the administration of criminal justice."⁶⁵ Turnover in prosecutor's offices across the country may be as high as 33 per cent annually.⁶⁶ The primary reason for this high turnover is inadequate financial compensation, as the previous table indicates.⁶⁷

Provision of adequate salaries will also act to reduce the likelihood of prosecutorial misconduct, since "adequately paid, full-time district attorneys and their staffs will be less susceptible to temptations of outside employment and to offers of money or favors in return for accommodating individuals whose cases come before them".⁶⁸

The source of the prosecutor's salary varies among jurisdictions, as the following table indicates:⁶⁹

SOURCE OF PROSECUTOR'S SALARY

Source	Number of Responses	Percent of Total (636)
State	83	13
State (County may Supplement)	40	6
State and County	86	14
County	425	67
Information not available	2	—
TOTAL	636	100

Examination should be made of the feasibility of state or federal supplementation in those local areas which are unable to adequately provide a salary for the prosecutor.

LEVEL OF SALARY

Salary levels for prosecutors vary considerably across

the country. The following table gives the result of a nationwide survey of prosecutors' salaries:⁷⁰

ANNUAL SALARY OF PROSECUTORS

Annual Salary	Number of Responses	Percent of Total Responses
\$Under 10,000	352	37.4
10,000-11,999	104	11.0
12,000-15,999	176	18.7
16,000-19,999	112	11.9
20,000-24,999	136	14.6
25,000-49,999	59	6.4
TOTAL	939	100.0

"The median income of all prosecutors in 1973 was \$ 2,500 per year. The total salary range reported was from \$1,120 to \$44,028. These figures include part-time prosecutors. Full-time prosecutors received a median of \$22,042 per year . . . When a median hourly salary is computed for full-time prosecutors, the figure derived is \$11.74. For part-time prosecutors, the hourly median salary is between \$6.50 and \$7.50."⁷¹ Additional material on various prosecutors' salaries, along with a comparison of trial judge salaries, is provided in Appendix 1 — III. Figures on increases in salaries by years of service for metropolitan prosecution offices are shown in the table below.⁷²

The salary provided the prosecutor should be at least that of the salary of the judge of general trial jurisdiction of the district of the prosecutor:

For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is therefore reasonable that the compensation for the holders of these offices have the same base.⁷³

Those jurisdictions which still have a part-time prosecutor should have salaries set by a professional compensation board at the state level.

SALARIES BY YEARS OF SERVICE

Jurisdiction	Aver. Beginning Salary		Aver. Salary 2 yrs.		Aver. Salary 5 yrs.		Aver. Salary 10 yrs.		Sick Leave	Vacation	Vacation Low—High	
	Low	High	Low	High	Low	High	Low	High				
Los Angeles	\$889	\$1,107	\$1,203	\$1,499	\$1,499	\$1,867	\$1,673	\$2,084	Yes	Yes	2 wk. - 4 wk.	
Detroit	750	1,043	1,082	1,331	1,353	1,610	1,618	1,882	Yes	Yes	12 da.	
Brooklyn	—	—	—	—	—	—	—	—	Yes	Yes	—	
Cleveland	833	1,000	1,000	1,167	1,167	1,333	1,333	1,500	Yes	Yes	2 wk. - 4 wk.	
Houston	730	960	960	1,210	1,210	1,405	1,405	1,675	Yes	Yes	1 wk. - 4 wk.	
Bronx	833	958	1,000	1,083	1,165	1,375	1,450	1,916	Yes	Yes	15 da.	
Miami	625	792	792	958	958	1,125	1,125	1,333	Yes	Yes	1 wk. - 4 wk.	
Buffalo	665	850	948	1,191	1,067	1,340	1,243	1,496	Yes	Yes	4 wk.	
St. Louis	679	956	867	1,107	1,004	1,282	1,282	1,635	Yes	Yes	2 wk. - 4 wk.	
Phoenix	591	650	650	795	795	1,013	1,013	1,294	Yes	Yes	15 da.	
Cincinnati	416	538	538	750	750	1,083	1,083	1,417	Yes	Yes	2 wk. - 4 wk.	
Baltimore	811	851	780	986	939	1,198	1,141	1,457	No	Yes	30 da.	
Sacramento	905	1,000	1,274	1,404	1,475	1,626	1,626	1,792	Yes	Yes	1 yr. 2 wk. - 2 yr. 4 wk.	
Allanta	666	833	833	1,000	1,000	1,166	1,166	1,333	Yes	Yes	2 wk. - 3 wk.	
Crown Point	708	790	790	875	875	1,000	1,000	1,166	No	Yes	2 wk. - 2 wk.	
Portland	857	1,006	985	1,156	1,135	1,332	1,315	1,544	Yes	Yes	2 wk - 4 wk.	
Denver	700	833	1,000	1,166	1,166	1,166	1,166	1,166	Yes	Yes	12 da.	
St. Paul	875	1,107	1,023	1,295	1,197	1,515	1,347	1,705	Yes	Yes	2 wk. - 4 wk.	
New York	—	3,083	Increase based on salary increases of judiciary-chief trial court of jurisdiction				1,515	1,347	1,705	Yes	Yes	1 wk - 4 wk.

REVIEW OF SALARY

A review mechanism should be established to periodically examine and evaluate the salary of the prosecutor in light of changing economic conditions. Current practice in many jurisdictions is to provide review and alteration of the prosecutor's salary only at the beginning of each term. This could result in a net decrease in the prosecutor's salary, as Trimble notes:

A Constitutional prohibition against a salary increase during a term of office in Oklahoma means that the DA receives no salary increases or cost of living adjustment for 4 years. This is crazy. He is making 24% less when he ends the term than when he starts it.⁷⁴

Unless statutory provision is made for periodic in-term increases in salary, a board or mechanism should be established with authority to review and revise prosecutors' salaries in light of changing economic conditions.

BENEFITS

A program of benefits should be established to complement the salary of the prosecutor and his staff. These benefits should include both health insurance coverage and provisions for accumulation of retirement benefits. Since it is comparatively rare for a prosecutor to serve exclusively as a prosecutor throughout his career, a method should be established whereby a prosecutor may be provided retirement coverage commensurate with the length of his service in office. Connecticut provides that the prosecutor on retiring "shall receive annually as retirement salary, for each year he has served in any such office, one-tenth of two-thirds the salary of the office which he held at the time of his retirement, as such salary may be changed from time to time; but in no event more than two-thirds of such salary".⁷⁵

SUSPENSION

A means should be instituted whereby the prosecutor may be suspended from office. Suspension should be instituted as a punishment for actions of minor misconduct which do not warrant removal of the prosecutor. Suspension might also be instituted as a prelude to the institution of removal proceedings against the prosecutor. Suspension mechanisms should provide for hearing procedures at which the rights of the prosecutor are protected.

REMOVAL

Provision should be established for expeditious removal of the prosecutor when it has been fairly determined that he is no longer fit to hold office.

Various removal mechanisms are employed by different states. Impeachment is the most usual method of removal.⁷⁶ Removal by the Governor is another common method. Other methods of removal include removal by a court,⁷⁷ removal on recommendation of the Attorney General,⁷⁸ impeachment by the legislature,⁷⁹ or recall provisions.⁸⁰

Grounds for removal also vary among the different states. Grounds for removal include such causes as "malfeasance, misfeasance, nonfeasance, or nonadministration in office",⁸¹ "incompetency, neglect of duty or misuse of office when such incompetency, neglect of duty or

misuse of office has material adverse effect upon the conduct of such office",⁸³ and "incompetency, corruption, malfeasance or delinquency in office, or other sufficient cause".⁸⁴ Disbarment and conviction of a serious crime are other common grounds for removal. Removal proceedings, however, are seldom utilized: "The district attorney need fear ouster only for criminal activity, and even where evidence of such conduct exists, ouster proceedings are seldom employed."⁸⁵

The method adopted for removal of the prosecutor should provide a clear statement and interpretation of all possible grounds for removal, and a speedy means of accomplishing the removal hearing. Protection of the rights of the prosecutor must be guaranteed by any system of removal.

footnotes

1. Advisory Commission on Intergovernmental Relations, *Report: State-Local Relations in the Criminal Justice System* 112 (1971) [hereinafter cited as *ACIR*].
2. National Advisory Commission on Criminal Justice Standards and Goals, *Courts* 230 (1973) [hereinafter cited as *NAC Courts*].
3. President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: the Courts* 73-74 (1967) [hereinafter cited as *Task Force Report: The Courts*].
4. See Appendix 1 — *Infra*.
5. *ACIR* 112.
6. *Del. Code Ann.* tit. 29 §2502, (1975).
7. *R.I. Gen. Laws A.n.* §42-9-1 (1970).
8. *Conn. Gen. Stat.* §51-278 (1960).
9. *Id.*, §51-282.
10. *Alaska Stat.* §44.23.050 (1962).
11. *N.J. Stat. Ann.* §2A: 158-1 (1971).
12. See "Prosecutor Indiscretion: A Result of Political Influence", 34 *Ind. L.J.* 477 (1959).
13. Johnson, "The Influence of Politics Upon the Office of the American Prosecutor", 2 *Am. J. Crim. L.* 187, 193 (1973).
14. *Id.* at 193.
15. Newman, "Prosecutor and Defender Reform: Reorganization to Increase Effectiveness", 44 *Connecticut B.J.* 567, 569 (1973).
16. *Id.* at 569.
17. A.B.A. *Project on Standards for Criminal Justice, Prosecution Function* 61 (Approved Draft, 1970) [hereinafter cited as *ABA Prosecution Function*].
18. Johnson, *supra* note 13, at 204.
19. See "Application of the Missouri Court Plan to Judicial Selection and Tenure in America Today", 15 *Buffalo L. Rev.* 378 (1965); "Judicial Selection and Tenure — the Missouri Plan", 58 *Illinois B.J.* 510 (1970); "Merit Selection and Merit Election of Judges", 4 *G. St. B. J.* 169 (1967).
20. *Ore. Rev. Stat.* §252-640(1) (1953).
21. Jacob, "Judicial Insulation — Elections, Direct Participation, and Public Attention to the Courts in Wisconsin", 1966 *Wisconsin L. Rev.* 801.
22. *Id.* at 809.
23. *Id.* at 812.
24. *Id.* at 811.
25. See, e.g., *Minn. Stat.* §487.03 (1961).
26. NDAA Prosecutors Surveys, 1976 data compilation. For additional data, the following may be used: NAAG, *The Survey of Local Prosecutors*, which is one of a series of invaluable reports on the Attorney General and on local prosecutors prepared by the Committee on the Office of the Attorney General of the National Association of Attorney Generals. Others in the continuing examination include *The Office of the Attorney General (1971) Survey of Local Prosecutors: Data Concerning 1000 Local Prosecutors* (1973), and *The Prosecution Function: Prosecutors and the Attorney General* (1974).

27. See Appendix 1 — *Infra*.
28. Jacob, *supra*, note 21, at 809.
29. Johnson, *supra*, note 13, at 194.
30. See Kuh, "Careers in Prosecution Offices", 14 *J. Legal Ed.* 175, 178 (1961).
31. NAAG, *The Prosecution Function: Prosecutors and The Attorney General* NDAA (1974) [hereinafter cited as NAAG *Prosecutor Function*].
32. Jacob, *supra* note 21, at 810.
33. Ori, "The Politicized Nature of the County Prosecutor's Office, Fact or Fancy? — The Case in Indiana", 40 *Notre Dame Lawyer* 292 (1965).
34. Engstrom, "Political Ambitions and the Prosecutorial Office", 33 *J. Politics* 190, 192 (1971). This figure may be deceptively low in estimating prosecutors who do not intend to make a career of prosecution, since it only applies to those interested in leaving office for political reasons, not to seek a position in private practice.
35. Felkenes, "The Prosecutor: A Look at Reality", 7 *Sw. U. L. Rev.* 106 (1975).
36. *Task Force Report: The Courts* 72.
37. See *People ex rel Elliott v. Benefiel*, 405 Ill. 500, 91 N.E. 2d 427 (1950); Application of Sposato, 43 N.Y.S.2d 785, 180 Misc. 940 (1943).
38. *N.J. Stat. Ann.* §2A: 158-1 (1971).
39. *Pa. Stat. Ann.* tit. 16, §1401 (1956).
40. For an interesting interpretation of "practicing law" see *Riddle v. Roy*, 126 So. 2d 448 (1960), which concerns a Louisiana constitutional requirement of three years practice as eligibility for the office of district attorney. The court held that an attorney was "practicing law" as long as he was ready, willing, and able to practice law, even if he had no clients or conducted no legal business. Most states now use "admission to the practice of law" rather than "practicing law".
41. See NDAA Standards 4.1 — 4.3 re Certification, Training, and Education *infra*.
42. NAC *Courts* 229.
43. NAAG *Prosecution Function* 9.
44. *Task Force Report: The Courts* 73.
45. ABA *Prosecution Function* 60.
46. Taylor, "The State's Attorney's Dilemma", 16 *S.D. L. Rev.* 222, 226 (1971).
47. ACIR 113.
48. Morgan & Alexander, "A Survey of Local Prosecutors", 47 *State Gov't.* 42, 43 (1974).
49. California District Attorneys Association, *Uniform Crime Charging Standards* 54 (1974).
50. Bowley, "Law Enforcement Role in Consumer Protection", 14 *Santa Clara Lawyer* 555, 564 (1974). See also, "Consumer Protection: An Expanded Role for the Local Prosecutor", 44 *U. Cin. L. Rev.* 81 (1975).
51. Bowley, *supra* note 50, at 565-567.
52. See Busch, "Role of the District Attorney in Civil and Criminal Child Support Enforcement", 47 *LAB Bull.* 56 (1971).
53. See Wagoner, "Environmental Protection in California: Court Action Powers of State and Local Government Attorneys", 14 *Santa Clara Lawyer* 296 (1974).
54. See Stulberg, "Civil Alternatives to Criminal Prosecution", 39 *Albany L. Rev.* 359 (1975).
55. *Attorney General v. Tufts*, 239 Mass. 458, 489 132 N.E. 322, (1921).
56. *Task Force Report: The Courts* 73.
57. *Id.* at 73.
58. *Id.* at 74.
59. NAC, *Community Crime Prevention* 271 (1973).
60. ABA *Prosecution Function* 52.
61. Zody, "Kansas County Attorneys: A Survey Analysis", 2 *Kan. Prosecutor* 13 (Winter 1975).
62. Judicial Insulation, *supra* note 21, at 810.
63. See also the Commentary and Standards on Career Orientation *infra*.
64. NAAG *Prosecution Function* 11.
65. Gelber, "Who Defends the Prosecutor?", 14 *Crime & Delinquency* 315, 316 (1968).
66. *Id.* at 316.
67. NDAA, *Report on Proceedings, NDAA Metropolitan Prosecutor's Conference* 44 (1971). The information for Denver seems to be either inaccurate or incomplete, since the stated figures do not represent a 100% sample.
68. NAC, *Community Crime Prevention* 271 (1973).
69. NAAG, *Survey of Local Prosecutors* (1972).
70. NAAG *Prosecution Function*.
71. *Id.* at 11.
72. NDAA, *Report: Proceedings, NDAA Metropolitan Prosecutor's Conference* (1971); NDAA Prosecutors Surveys — 1976 data.
73. NAC *Courts* 230.
74. Trimble, "Here Comes the DA", 7 *Prosecutor* 476, 478 (1971).
75. *Conn. Gen. Stat. Rev.* §51-287 (1960).
76. See Appendix 1 — *Infra*.
77. In Connecticut, New Hampshire, and Texas.
78. See *Md. Const.* art. V, §7.
79. See *Md. Const.* art. V, §7; *Wash. Const.* art. 4, §9.
80. As in Oregon.
81. *Hawaii Rev. Stat.* §62-13 (1968).
82. *Md. Const.* art. V §7.
83. *Va. Code Ann.* §24.1-79.5 (1975 Supp.).
84. *Wash. Const.* art. 4, §9.
85. "Private Prosecution: A Remedy for District Attorney's Unwarranted Inaction", 65 *Yale L.J.* 209, 212 (1955).

appendix 1 — I

NATURE OF THE PROSECUTOR

STATE	TITLE	JURISDICTION	AREA	SELECTION	TERM	REMOVAL
Alabama	District Attorney	Criminal-Civil	Judic. Dist	Elected	4 years	Impeachment
Alaska	District Attorney	Criminal-Civil	Judic. Dist	Appointed		Governor
Arizona	County Attorney	Criminal-Civil	County	Elected	4 years	
Arkansas	Dist. Pros. Att.	Criminal	Judic. Dist.	Elected	2 years	Impeachment
California	District Attorney	Criminal-Civil	County	Elected	4 years	Impeachment
Colorado	District Attorney	Criminal	Judic. Dist.	Elected	4 years	Impeachment
Connecticut	Prosecuting Att.	Criminal	County	Appointed	4 years	Court of Common Pleas
	State's Attorney	Criminal	County	Appointed	4 years	Superior Court

STATE	TITLE	JURISDICTION	AREA	ELECTION	TERM	REMOVAL
Delaware	No local prosecutor					
Florida	State's Attorney	Criminal-Civil	Judic. Circuit	Elected	4 years	
Georgia	District Attorney	Crim.-Civil App.	Judic. Dist.	Elected	4 years	Impeachment
Hawaii	City or County Att.	Criminal-Appeals	County	Elected	2 years	Impeachment
Idaho	Prosecuting Att.	Criminal-Civil	County	Elected	2 years	
Illinois	State's Attorney	Crim.-Civil App.	County	Elected	4 years	
Indiana	Prosecuting Att.	Criminal	Judic. Dist.	Elected	4 years	Impeachment Supreme Court
Iowa	County Attorney	Criminal-Civil	County	Elected	4 years	Recall, Impeachment
Kansas	County Attorney	Crim.-Civil-App.	County	Elected	2 years	
Kentucky	County Attorney	Misdemeanors-	County	Elected	4 years	
	Commonwealth Attorney	Felonies-St. Civil	District	Elected	6 years	Impeachment
Louisiana	District Attorney	Crim.-St. Civil	Judic. Dist.	Elected	6 years	
Maine	District Attorney	Criminal-Civil	Prosecutorial District (8)	Elected	2 years	Supreme Judi- cial Court
Maryland	State's Attorney	Criminal-Civil	Co. or City	Elected	4 years	Impeachment, AG
Massachusetts	District Attorney	Crim.-St. Civil-App.	Judic. Dist.	Elected	4 years	Impeachment, AG
Michigan	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	Governor
Minnesota	County Attorney	Crim.-Civil-App.	County	Elected	4 years	Governor
Mississippi	District Attorney	Felonies	Judic. Dist.	Elected	4 years	
	County Pros. Att.	Misdemeanors	County	Elected	4 years	
Missouri	Prosecuting Att.	Criminal	County	Elected	2 years	Suit
	County Attorney	Misdemeanor	County	Elected	2 years	Suit
Montana	County Attorney	Criminal-Civil	County	Elected	4 years	
Nebraska	County Attorney	Criminal-Civil	County	Elected	4 years	Governor Suit by Accusation, Complaint
Nevada	District Attorney	Criminal-Civil	County	Elected	4 years	
New Hampshire	County Attorney	Criminal-Civil	County	Elected	2 years	Superior Court
New Jersey	County Prosecutor	Criminal	County	Governor with consent of Sen.	5 years	
New Mexico	District Attorney	Criminal	Judic. Dist.	Elected	4 years	
					4 years	
New York	District Attorney	Crim.-App.	County	Elected	3 years	Governor
North Carolina	District Attorney	Criminal	District	Elected	4 years	
North Dakota	State's Attorney	Crim.-App.	County	Elected	2 years	Governor
Ohio	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	
Oklahoma	District Attorney	Criminal-Civil	District	Elected	4 years	Impeachment, Suit
Oregon	District Attorney	Crim.-Civil-App.	County	Elected	4 years	Recall, Suit
Pennsylvania	District Attorney	Civil-Crim.-App.	County	Elected	4 years	Impeachment
Rhode Island	No local prosecutor					
South Carolina	Solicitor	Criminal-St. Civil	Judic. Dist.	Elected	4 years	
South Dakota	State's Attorney	Criminal-Civil	County	Elected	2 years	Governor
Tennessee	District A.G.	Criminal	Judic. Dist.	Elected	8 years	Impeachment
Texas	County Attorney	Criminal-Civil	County	Elected	4 years	District Court
	District Attorney	Criminal	District	Elected	4 years	District Court
	Criminal D.A.	Criminal	County	Elected	2 years	
						Court Trial, Referendum, Impeachment
Utah	County Attorney	Crim.-Civil-Felonies	County	Elected	4 years	
Vermont	State's Attorney	Crim.-Civil-App.	County	Elected	2 years	Impeachment
Virginia	Commonwealth Attorney	Criminal-Civil	County or City	Elected	4 years	Circuit Court Legislative Resolution
Washington	Prosecuting Att.	Crim.-Civil-App.	County	Elected	4 years	
West Virginia	Prosecuting Att.	Criminal-Civil	County	Elected	4 years	Impeachment

STATE	TITLE	JURISDICTION	AREA	SELECTION	TERM	REMOVAL
Wisconsin	District Attorney	Criminal-Civil	County	Elected	2 years	Governor
Wyoming	County and Prosecuting Att.	Criminal-Civil	County	Elected	4 years	Governor

Source: The following chart is a composite developed by NDAA of material gathered from various sources, including

- *1. NAAG, COAG, *Survey of Local Prosecutors* (June 1972)
2. NAAG, COAG, *The Prosecution Function* (1974)
- *3. ACIR, "State-Local Relations in the Criminal Justice System" (Aug. 1971)
4. NDAA, "The Prosecuting Attorneys of the U.S. — 1965 (1966)
5. Statute research by Standards and Goals Staff. (NDAA)

Some states status updated to 1975-76 by National District Attorneys Association.

ix 1 — II

PROSECUTOR SALARY AND BUDGET COMPARISON SURVEY 1975 - 1976

JURISDICTION	POPULATION	CURRENT BUDGET	NO. OF ASSTS.	ASST. SALARIES MIN.	ASST. SALARIES MAX.	CHIEF PROS. SALARY
Orange County (Calif.)	1,646,300	\$ 5,450,696	94	\$14,412	\$42,408	\$45,360
Baltimore City (MD.)	900,000	2,653,918	96	13,500	24,700	37,000
San Diego County (Calif.)	638,000	6,077,671	102	13,680	39,168	42,996
Cook County (Chicago, Ill.)	5,493,529	11,465,986	341	14,400	39,660	42,200
Sacramento County (Calif.)	700,000	4,739,113	69	13,238	34,723	38,377
Alameda County (Oakland, Calif.)	1,100,000	4,043,635	105	13,632	36,180	40,056
Bronx County (NY.)	1,478,000	6,032,230	151	13,000	40,000	40,800
Nassau County (NY.)	1,500,000	4,053,500	96	15,000	39,500	45,000
Dade County (Miami, Fla.)	1,389,400	3,638,422	80	12,000	38,000	46,000
Harris County (Houston, Texas)	2,000,000	4,191,426	109	14,136	33,168	43,120
Los Angeles County (Calif.)	7,100,000	28,014,818	605	15,516	44,000	44,028
Oakland, CA (Alameda County)	1,100,000	4,044,000	105	13,632	36,180	40,056
Phoenix, AZ (Maricopa County)	1,119,000	2,567,060	80	12,000	30,000	23,500
San Jose, CA (Santa Clara County)	1,665,000	4,537,589	69	14,424	38,463	46,128
Minneapolis, MN (Hennipin County)	981,000	1,600,000	54	13,000	28,500	32,000
St. Louis, MO	957,100	1,240,000	37	11,000	22,000	22,500
Hackensack, NJ (Bergen County)	911,480	1,800,000	23 (72 Inv.)	14,500	34,000	40,000
Buffalo, NY (Erie County)	1,127,000	1,838,601	62	10,680	32,716	48,996
Seattle, Washington (King County)	1,144,000	2,300,000	60	13,240	27,156	30,300
Milwaukee, WI	1,060,000	2,028,000	53	16,000	33,300	37,391
St. Paul, Minn. (Ramsey County)	483,309	1,100,000	31	14,676	34,104	33,500
Salt Lake City, Utah (Salt Lake County)	506,000	1,200,000	33	12,000	25,000	25,250

Source: NDAA Prosecutor Surveys conducted in 1976.

JUDICIAL SALARIES IN APPELLATE AND TRIAL COURTS

State	Supreme Court	Intermediate Appellate Court	General Trial Court	Date of Last Salary Change
Alabama	\$ 33,500	\$ 33,000	\$ 25,000	12/ 1/75
Alaska	52,992		48,576	6/ 1/75
Arizona	37,000	35,000	33,000	1/ 6/75
Arkansas	29,553		27,500	7/ 1/75
California	57,985	54,361	45,299	9/ 1/75
Colorado	35,000	32,000	28,000	7/ 1/73
Connecticut	36,000		34,500	1/ 3/73
Delaware	42,000		39,000	7/ 1/75
Florida	40,000	38,000	36,000	1/ 1/75
Georgia	40,000	39,500	32,500	7/ 1/75
Hawaii	45,000		42,500	1/ 1/76
Idaho	31,500		28,500	7/ 1/76
Illinois	50,000	45,000	37,000	7/ 1/75
Indiana	38,100	38,100	26,500-31,500	6/ 1/75
Iowa	36,000		31,500	7/ 1/75
Kansas	32,500		27,500	7/ 1/75
Kentucky	39,000	37,000	35,000	7/ 1/76
Louisiana	50,000	47,500	42,500	8/ 1/75
Maine	26,000		25,500	4/ 1/74
Maryland	44,100	41,400	39,200	7/ 1/75
Massachusetts	40,788	37,771	36,233	1/ 1/74
Michigan	43,500	41,961	26,500	1/ 1/76
Minnesota	36,500		32,000	7/ 1/73
Mississippi	34,000		30,000	7/ 1/74
Missouri	36,500	34,000	31,000	7/ 1/75
Montana	27,000		25,000	7/ 1/75
Nebraska	35,500		32,500	1/ 1/75
Nevada	35,000		30,000	1/ 1/75
New Hampshire	34,060		33,950	7/20/75
New Jersey	48,000	45,000	40,000	6/23/74
New Mexico	33,500	32,000	31,000	7/ 1/76
New York	60,575	51,627	46,998	7/ 1/74
N. Carolina	38,000	35,500	30,500	7/ 1/73
North Dakota	32,000		30,000	7/ 1/75
Ohio	40,000	37,000	34,000	1972
Oklahoma	30,000	26,000	25,000	7/ 1/75
Oregon	38,700	37,500	35,000	7/ 1/76
Pennsylvania	50,000	48,000	40,000	12/ 1/72
Rhode Island	33,000		31,000	5/26/74
South Carolina	37,762		37,762	7/ 1/75
South Dakota	28,000		26,000	4/ 1/75
Tennessee	39,330	36,052	32,775	9/ 1/74
Texas	47,400	41,800	32,803	9/ 1/76
Utah	30,000		27,500	7/ 1/75
Vermont	29,900		25,800	7/ 1/74
Virginia	\$ 44,000	\$ 41,000	\$ 36,900	7/ 1/76
Washington	39,412	36,325	34,250	7/ 1/75
West Virginia	35,000		31,500	7/ 1/76
Wisconsin	42,462		28,788	7/ 1/75
Wyoming	32,500		30,000	7/ 1/75
National Average	38,152 ^a	39,070 ^b	32,527 ^a	NA
District of Columbia	40,140		37,800	10/ 1/75
Federal System	63,000	44,600	42,000	10/ 1/75
Commonwealth of Puerto Rico	37,000		26,000	7/31/74

Source: National Center for State Courts, *Survey of Judicial Salaries in State Court Systems*, April, 1976.

^a Arithmetic average figured for the 50 states.

^b Arithmetic average figured for the 26 states that have intermediate appellate courts.

NOTE: Salaries including supplements are shown in parentheses immediately beneath the figures for state-paid salaries.

appendix 1 — IV

Floating Salary Statutes

California, Massachusetts and Tennessee provide for judicial salary increases based on a consumer price index. California utilizes the California consumer price index while Massachusetts and Tennessee use the U.S. consumer price index. Maryland provides automatic salary increases for the judiciary based on general salary increases awarded to all state employees. Rhode Island provides for longevity increases as shown in this section. The statutory authority for these automatic salary increases follow.

California: The California Government Code 68203 provides:

"In addition to the increase provided under this section on September 1, 1968, on the effective date of the 1969 amendments to this section and on September 1 of each year thereafter, the salary of each justice and judge named in Sections 68200 to 68202, inclusive, shall be increased by that amount which is produced by multiplying the then current salary of each justice or judge by the percentage by which the figure representing the California Department of Industrial Relations has increased in the previous calendar year."

The judges named in 68200 to 68202 include the Chief Justice of California, associate justices of the Supreme Court, justices of courts of appeal, superior court judges and municipal court judges.

Maryland: Maryland Code I-703 Pay Plan; Automatic Salary Increases, provides:

"(a) Pay plan. — Section 27, Article 64A of the Code applies to judicial salaries, except for its provisions authorizing emergency salary increases with approval of the Board of Public Works.

"(b) Automatic salary increases. — Whenever a general salary increase is awarded to state employees, each judge shall receive the same percentage increase in his salary as awarded to the lowest step of the highest salary grade for classified employees in the state salary plan."

Massachusetts: Massachusetts General Laws Annotated Chapter 30 §46 provides:

"The director of personnel and standardization shall annually determine the percentum difference between the average cost of living for the next preceding calendar year and the average cost of living for the calendar year during which the weekly rates prescribed in the above salary schedule were last revised, both as shown by the United States Consumer Price Index for such years, and shall prepare and submit to the general court a report of such determination within a reasonable time after said index for the next preceding calendar year has become available. Whenever such determination indicates a percentum increase or decrease of at least three percentum, such report shall be accompanied by a recommendation for legislation to provide a corresponding percentum increase or decrease in the salaries of all employees in the service of the commonwealth and paid from the treasury thereof. . . . Whenever such determination indicates a percentum increase of at least three percentum, as hereinbefore described, such report shall be accompanied by a recommendation of legislation to provide a corresponding percentum increase in the salaries of the chief justice and associate justices of the supreme judicial court, the appeals court, the superior court and the municipal court of the city of Boston, the judges and associate judges of the land court, the chief judge and the judges of probate and insolvency, the chief justice and the justices of the district courts other than the municipal court of the city of Boston, the justices and special justices of the Boston Juvenile Court, the justices of the Worcester, Bristol County and Springfield juvenile courts, and special justices of the district courts, including the municipal court of the city of Boston, such increase to take effect as of the beginning of the first payroll period of the year in which such report is submitted."

Rhode Island: General Laws of Rhode Island 36-4-16.5 provides:

Judges as well as all other court personnel are entitled to longevity increments. Longevity after seven years 5%, after

eleven years 10%, after fifteen years 15%, after twenty-five years 20%.

Tennessee: T.C.A. §2303 provides:

Beginning September 1, 1974, the compensation of judges and chancellors shall be the base salaries fixed in this law adjusted to reflect the percentage of change in the Consumer Price Index as reported by the U.S. Department of Labor. The adjustments shall occur on September 1, 1974 and on September 1 of every year thereafter for the ensuing year commencing September 1.

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related standards

ABA, *The Prosecution Function*: 1.1, 2.1, 2.2, 2.3

NAC, *Community Crime Prevention*: 12.9, 14.1
Courts: 12.1

NDAA: 1.1 relates to: 1.2, 25.2

1.2 relates to: 1.1, 1.3, 1.4, 4.1, 25.2

1.3 relates to: 1.2, 1.4, 1.5, 2.1, 2.2, 2.3, 4.1, 4.2, 4.3, 25.1, 25.2

1.4 relates to: 1.2, 1.3, 25.1, 25.2

1.5 relates to: 1.3, 25.1

I. REQUEST

Bill/Resolution No.: HJR 34
 Title: Election of Prosecuting Attorneys
 Sponsor: Representative Liska
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Office of the Governor
 Program Category Affected: Exec. Operation
 BRU, Program of Subprogram(s), Affected: Division of Elections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL: Not provided

IV. ANALYSIS: HJR 34 has no fiscal impact as the Division of Elections plans for the inclusion of constitutional amendments on the general election ballot.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Dana C. Coffman, Deputy Director

Phone: 586-6181

Division: Division of Elections

Date: April 27, 1983

Approved by Commissioner: *[Signature]*

Date: 4/28/83

Department: Lieutenant Governor

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

HJR

36

POUCH V
JUNEAU, ALASKA 99811
465-4990

P.O. Box 4-1325
ANCHORAGE, ALASKA 99509
248-1515



JK
CHAIRMAN
HOUSE JUDICIARY COMMITTEE
MEMBER
HOUSE RESOURCES COMMITTEE

Representative Charlie Bussell

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

April 7, 1983

Mr. Arthur H. Snowden, II
Administrative Director
Alaska Court System
303 "K" Street
Anchorage, Alaska 99501

Dear Mr. Snowden:

Thank you for your recent correspondence of mobilized informational endeavors relative to HJR 36, "Relating to the confirmation of justices and judges by the Legislature.

As you are aware, the maximum ethical validity of the measure was discussed with consummate procedural proficiency on Wednesday, March 30th, and passed out of Committee. I am certain that on the House floor it will be subject to studies of perceptive logistical structure and strategic philosophical rationale. Certainly qualitative relevant approximations may be forthcoming in order to reduce any perceived corrective anticipatory disparity in the orchestrated hierarchical integrity of the system.

Your fears of lengthy delays, as a functional administrative tactician, would not be of significant import, I would hope, through progressive humanistic accommodation and adapted management performance. It would be expected that accredited responsive studies would imply that tabulated definitive placement would render little harm to that tabulated definitive placement would render little harm to proficient concurrent stabilization now apparent in the system.

The resolution's sponsor seemed to believe that our courts' systematized multilateral uniqueness seems to fail in comprehensive informational responsiveness to the electorate. In particular, he expressed the idea that the qualified deliberative selectivity process indulged in by Judicial Council members is negatively responsive to the public, since they avoid the elective mode, in their positions.

As to your lack of opportunity for input, your staff--namely Ms. Karla Forsythe or Mr. Rick Barrier--have established a standing, weekly telephone call to the Committee staff in order to ascertain the topics regularly scheduled for the ensuing week. I have no knowledge as to how or why you were not informed.

Mr. Snowden
April 7, 1983
Page 2

Thank you for involving yourself in the legislative process.

Yours very truly,



Representative Charlie Bassell
Chairman, Committee on Judiciary

CB:cmz

cc: Representatives John Liska, Vice Chairman
Joe Hayes
Ramona Barnes
Hugh Malone
Don Clocksin
Ron Wendte



Alaska State Legislature House of Representatives

PO BOX 2716
ANCHORAGE, ALASKA 99510
(907) 276-4506

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4939

REPRESENTATIVE JERRY WARD
DISTRICT 13

MEMBER FINANCE COMMITTEE
CHAIRMAN OF SUBCOMMITTEE ON
COMMERCE & ECONOMIC DEVELOPMENT
CHAIRMAN OF SUBCOMMITTEE ON LABOR
MEMBER OF SUBCOMMITTEE ON STATE LOANS



MEMORANDUM

DATE: March 30, 1983

TO: Representative Charles Bussell, Chairman
House Judiciary Committee

FROM: Representative Jerry Ward *JW*

SUBJ: House Joint Resolution No. 36

Under our present system, the Governor appoints supreme court justices and superior court judges from lists prepared by the Alaska Bar Association and the Judicial Council. Since neither the Alaska Bar Association nor the Judicial Council are elected by the general public, there is a danger that this will be perceived as a self-serving process. By extending the function of legislative confirmation to these positions, this resolution brings the general public back into the process, allowing for public hearings and the expression of public will.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE JOINT RESOLUTION NG. 36
 Title Relating to the confirmation of justices and judges by the legislature.
 Requested by House Judiciary Committee Date 3/25/83

II. FISCAL DETAIL

Agency Affected Legislative Affairs Agency
 Program Category Affected General Government
 BRU, Program, Or Subprogram(s) Affected Session
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		-0-				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS None

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

It is estimated that no additional fiscal impact will result from this resolution.

IV. DATE 03-25-83

PREPARED BY Wally Harrison, Director, Admin. Svcs.

AGENCY Legislative Affairs Agency

Original: Legislative Finance

PHONE 465-3850

cc: Budget and Management

Prime Sponsor (First Legislator Named)

HJR

45

JR 45

95TH CONGRESS
1ST SESSION

H. J. RES. 23

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1963

Mr. PAUL (for himself and Mr. McDONALD) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to abolishing personal income, estate, and gift taxes and prohibiting the United States Government from engaging in business in competition with its citizens.

1 *Resolved by the Senate and House of Representatives of*
2 *the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the following*
4 *article is proposed as an amendment to the Constitution of*
5 *the United States, which shall be valid to all intents and*
6 *purposes as part of the Constitution when ratified by the leg-*
7 *islatures of three-fourths of the several States:*

1 "ARTICLE —

2 "SECTION 1. The Government of the United States
3 shall not engage in any business, professional, commercial,
4 financial, or industrial enterprise except as specified in the
5 Constitution.

6 "SECTION 2. The constitution or laws of any State, or
7 the laws of the United States, shall not be subject to the
8 terms of any foreign or domestic agreement which would ab-
9 rogate this amendment.

10 "SECTION 3. The activities of the United States Gov-
11 ernment which violate the intent and purposes of this amend-
12 ment shall, within a period of three years from the date of the
13 ratification of this amendment, be liquidated and the proper-
14 ties and facilities affected shall be sold.

15 "SECTION 4. Three years after the ratification of this
16 amendment the sixteenth article of amendments to the Con-
17 stitution of the United States shall stand repealed and there-
18 after Congress shall not levy taxes on personal incomes, es-
19 tates, and/or gifts."

○

98TH CONGRESS
1ST SESSION

H. R. 538

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1963

Mr. PHILIP M. CRANE introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1954 to repeal the estate and gift taxes and the tax on generation-skipping transfers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That (a) chapter 11 of the Internal Revenue Code of 1954
4 (relating to estate tax) is hereby repealed.

5 (b) Chapter 12 of such Code (relating to gift tax) is
6 hereby repealed.

7 (c) Chapter 13 of such Code (relating to tax on genera-
8 tion-skipping transfers) is hereby repealed.

1 (d)(1) The repeal made by subsection (a) shall apply to
2 the estates of decedents dying after the date of the enactment
3 of this Act.

4 (2) The repeals made by subsections (b) and (c) shall
5 apply with respect to transfers made after the date of the
6 enactment of this Act.

By LAURA LANE

Probably you have never heard of Bessie Craig or Lura Otte, but these unassuming farm women are true heroines. Both are widows, courageous in a special way.

They pioneered in a setting unfamiliar to them—the federal courts. Both hired competent attorneys to help them press for justice in estate tax cases. Each won—not just for herself but for other farm wives who have worked along with their husbands, managed and sometimes scrimped to have a good life and, in the process, build a farm estate to pass along to their children. Here are their stories:

Bessie Craig vs. The United States of America

FACTS: Bessie married Clarence Craig in 1925, and they started farming from scratch on rental land in Brown County, S.D. From day one of their 43 years of married life, Bessie was the bookkeeper—she had studied bookkeeping and typing in high school, and she developed her own form of enterprise accounting.

The Craigs were good farmers and good managers. They bought their first farm during the Depression (1930), and from time to time borrowed money to add other parcels to their holdings. They raised wheat, corn, oats, barley and flax, and they had stock, too—a cow-calf operation, hogs, sometimes sheep and a sideline Shetland pony business.

Early in their marriage Bessie worked in the fields, and she was always available to haul grain or stock. Once she trucked a load of horses from Missouri to South Dakota. Somehow she found time to raise a big garden and do a great deal of canning—vegetables, fruit, meat.

The Craigs' five children helped as they grew old enough, but that wasn't sufficient. Clarence and Bessie together hired farm laborers who "lived in." Bessie cooked for them, did their laundry, mended all their clothing, cleaned their quarters.

She had one enterprise of her own—a butter and egg route in town. She churned by hand and molded the butter; and the chickens were her special responsibility. "I'd get up in the middle of the night to see after my baby chicks," she reminisced to me not long ago in her comfortable living room. The money from this and all

farm sales went into a single bank account in both names.

When Clarence and Bessie went on cattle-buying trips, she usually wrote the checks. And she was the one who hired truckers to deliver the stock to the farm. A favorite meal of truckers was hamburgers and homemade cherry pie, she says.

The Craigs were fortunate to have an astute attorney, Douglas Bantz of Aberdeen, who persuaded them as early as 1958 to "equalize" their holdings for estate tax purposes. When Clarence died following a car accident in 1968, he held title to 5½ quarter sections of land, Bessie to 7½, and they owned one parcel of pastureland in joint tenancy. In his will Clarence set up a trust, through which his hold-

Her name may appear in countless law books, but Bessie Craig remains an unassuming woman. She has a head for business and in preparation for testimony in her case against the U.S. she was able to produce bank checks written 30 years earlier. Now that sons operate the farm, Mrs. Craig lives in a small town, enjoying family and friends

A farm-reared South Dakota attorney, Kenneth L. Gosch knows firsthand about "the value of a woman in the family business."



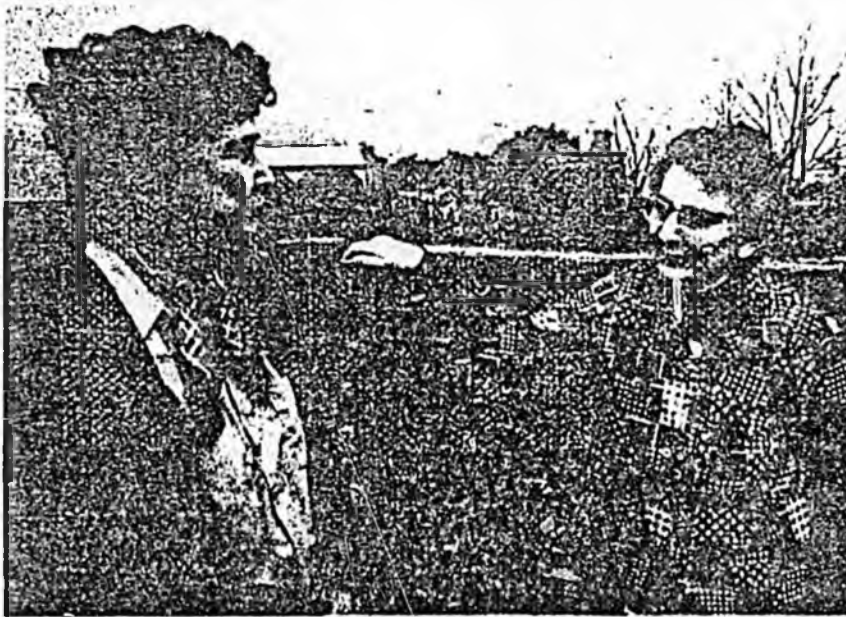
Photos Richter's House of Portraits

They sued the IRS —and won

Victories by two widows in federal estate tax cases may help other farm women who feel they have been denied justice

This is the first of two articles about farm women who have won court battles in estate tax cases.





Lura Otte, right, keeps up with changes in estate tax laws and alters her estate plan accordingly. "These days a widow needs all the help she can get," she tells the author, Laura Lane, left. Mrs. Otte especially values the continuing support of two sons and three daughters, all in farming. The youngest son, unmarried, lives in the family home with her. Mrs. Otte remains a record-keeper and keen analyst of commodity market trends.

ings went to the children. Bessie inherited only household goods and the family car, since she already owned half of the farm (966.5 acres). Neither the South Dakota Department of Revenue nor IRS contested her ownership of real property.

THE ISSUE: At stake was personal property valued at \$265,405.09—machinery worth \$53,938.50; livestock, including 620 head of cattle, valued at \$167,864.56; and miscellaneous assets (stored grain, interest in several co-ops, etc.) worth \$43,602.03.

Attorneys for the U.S., strictly interpreting the Tax Code, claimed Bessie owned none of this personal property and said she therefore owed IRS an additional \$42,318.79 in tax. (A tax she describes as "a whopper" already had been paid by the estate.) Bessie forked over the tax deficiency, but reserved the right, as executrix, to sue to get the money back.

Bessie's attorneys, Kenneth L. Gosch and Harry N. Sandstrom (then partners of Mr. Bantz), chose to fight the case on their own home ground—that is, in District Court in Aberdeen. They preferred this to the Tax Court, which they feel often favors IRS.

By the time the case began on a blizzard day in November, 1977, Bessie had done her homework. In one instance that meant digging up a check she had written in 1946—more than 30 years earlier.

It was easier to find records than to keep her cool when a U.S. tax attorney accused her of "a self-serving assertion not in accordance with the objective facts." She could not deny that on federal income tax returns (which Bessie always prepared for review by a CPA) that "Mr. Craig is listed as a farmer while Mrs. Craig is not listed as having an occupation." Nor had Bessie and Clarence ever filed a partnership income tax return, the government's attorneys pointed out.

Bessie had a chance to testify in her own behalf ("I wasn't scared," she told me), and so did three of the Craig children and the family banker. The Justice Department attorneys from Washington, D.C., were polite to Bessie, but out of her hearing they often chided her counsel on the futility of her case. Nevertheless, attorneys Gosch and Sandstrom kept hammering away at the idea that if it had not been for Bessie's help, Clarence would



Photos John Starkey Black Star

Elmer E. Lyon was the first attorney to sell the Tax Court on the idea that farming can be a team operation, involving both husband and wife.

have had to employ another hired man. And they never let anyone forget that Bessie had been a joint decision-maker with her husband.

"The best point in Bessie's favor was that she and Clarence really did operate as farm partners," attorney Gosch told me.

He explained to me why he and his partner had delayed filing suit against the U.S. for several years. "We felt there was a changing mood in the country. The longer we waited, the more people would realize the value of a woman in a family business."

THE VERDICT: Judge Fred J. Nichol wrote the Court's decision announced on June 14, 1978. Some of his statements were music to a farm wife's ears: "All in all, the efforts of Bessie Craig, in the operation of the family farm, as well as her capital contributions in income derived from her land, can properly be characterized as those of a partner, in the fullest business sense of the word . . ."

"The Court will not ignore this farm wife's contribution to the success of the business as the Internal Revenue seeks to do . . . (T)he plaintiff is entitled to the refund sought."

In time, Bessie got back her \$42,318.79 plus interest. She had to pay attorneys' fees, of course, but it is a great satisfaction "to get justice," she says with a proud smile.

Now Bessie's place in history is assured—in future law books, later generations will study "Craig vs. The United States of America."

Lura Otte vs. Commissioner of Internal Revenue

FACTS: Everett and Lura Otte farmed in Jackson County, Ind., fol-

lowing their marriage in July 1932. Like the Craigs, they acquired land by the "borrow-then-pay-for" method, using farm income to buy several tracts to add to their 103-acre "homeplace" Everett bought before their marriage. They held title jointly, or as Indiana law puts it, "as tenants by the entireties."

Under Indiana law, income from such joint property belongs to spouses in equal shares, and "each spouse is considered to have paid from his or her separate funds one half of the cost of any property acquired through payment of the income from such property."

In 1947 Everett inherited from his father one-quarter interest in 20 acres. He and Lura then bought out the three other heirs—one brother and two sisters. Lura also received an inheritance—\$2,170 from the estate of her mother in 1951. She used most of it to buy an Oliver 66 tractor and the remainder to install running water and a bath in a farm house the Ottes owned.

The Ottes began farming with horses (as the Craigs had done), and Lura would drive a team to harrow, disk, plant or haul hay. Later she learned to drive a truck and made trips to town for feed. When Everett was "working at another place," Lura helped care for the stock and did the milking. She kept chickens, too; premiums for an endowment life insurance policy on Everett were paid with her hen-and-egg money.

One enterprise of the Ottes was raising certified seed. Lura took responsibility for picking out odd kernels, and she also handled most orders and deliveries. She set out cabbages and tomatoes; helped harvest both.

Somehow she managed to keep track of markets to determine "the best day to sell hogs." She was in charge of many financial affairs, including the bookkeeping.

Everett and Lura Otte reared five children—two sons now farm land that Lura owns.

In 1966 Everett had an opportunity to go to Russia as part of a farmer exchange program. Beforehand he decided to get his affairs in order, and that included some estate planning, which he had learned about at Farm Bureau meetings. On the advice of his attorney, Everett transferred approx-

imately 260 acres to Lura separately, of the 636 acres jointly owned. He did this for several reasons: to cut estate taxes in the event of his death, to compensate Lura for her hard work and give her more experience in managing real estate, and to lessen his own responsibilities, even though at age 61 he was in excellent health and had never had any serious illnesses.

About a year after the trip to Russia (Oct. 10, 1967) Everett Otte died of a cerebral hemorrhage.

THE ISSUES: The IRS and Lura Otte had several bones of contention on federal estate taxes due, but the principal one was IRS's contention that none of the real and personal property reported on the estate tax return originally had belonged to Lura, with the exception of the inheritance from her mother. In other words, her contribution had not been of "money or money's worth." IRS billed Lura for an additional \$7,943.44. This was "widow's tax," because if Lura had died first, Everett would have been recognized as the owner and not billed for a delinquency.

Lura contended IRS had not given her proper credit and said she was due a refund of federal estate tax amounting to \$1,870.29.

"I just felt I had made a considerable contribution to buying, upkeep and farm expenses, but in the eyes of IRS a woman's work counts as nothing," she told me in reviewing her battle in the federal Tax Court in Indianapolis.

Was she frightened? "No, I felt secure with my figures. I had to supply complete records for every year we had farmed, and it was those farm records that convinced the judge."

Her principal attorney, Elmer E. Lyon of Indianapolis, adds: "Mrs. Otte's openness and honesty couldn't be ignored. She had never considered herself as a partner of her husband—women didn't in an earlier era, even if they were outstanding performers like Mrs. Otte. But we were able to sell the court on the idea that Everett and Lura were a husband-and-wife team."

THE VERDICT: The concept of a husband-wife team was recognized by Judge Graydon G. Withey in his memorandum decision of March 28, 1972. He noted that the home farm had been in Everett's name only until

1958, but added: "We believe the enhanced value of the homeplace resulting from (Everett and Lura) working as a team constitutes jointly acquired property subject to equal division for estate tax purposes . . ."

"Lura's efforts, industry and skills were not limited to those of an ordinary housewife and contributed to the success and growth of the overall farming operation."

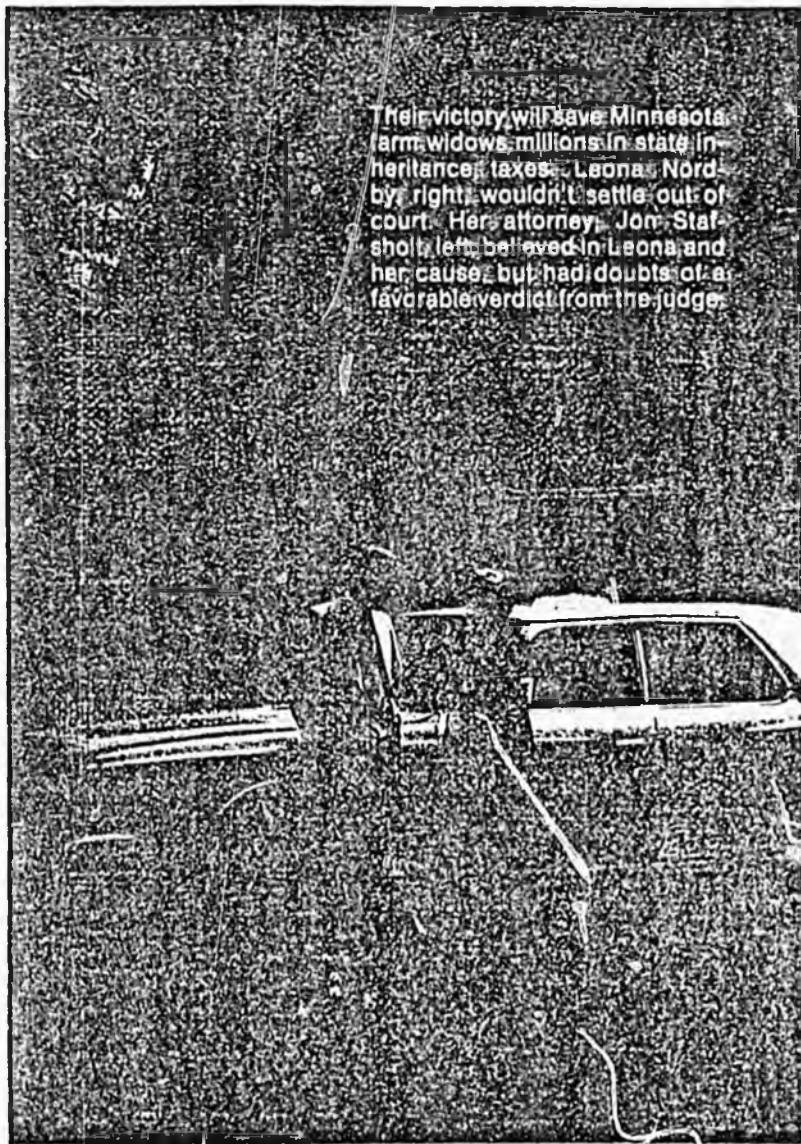
The money involved was not an enormous sum by today's inflated standards, but Lura Otte was satisfied in the knowledge that a woman's contribution was officially recognized, despite strenuous objection by IRS. She keeps up with federal estate tax law and believes it should be changed to give justice to "women up and down the road who are milking cows, driving tractors." When told that her case had helped other women she had never heard of, she said: "Really? Well, I'm happy that is the case."

The 1978 change in the federal tax law that allows a widow or widower to "earn" and exclude from estate tax 2% a year of jointly held property often is referred to as "the Otte Amendment," attorney Lyon says. That's an unexpected reward for Lura Otte.

Many other widows have contributed to farm estate building and conserving, letters to FARM JOURNAL tell us, but whether they could win in the courts depends on individual circumstances. What a woman needs is a sense of her own worth, records to back her up, some money for legal fees, a determination to see justice done—and the courage of a Bessie Craig or a Lura Otte.

More on Estate Planning

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," a companion piece for FARM JOURNAL's *Estate Planning Idea Book*, is just off the press. To order, send \$1 plus 40¢ delivery charge to: Revenue Act, Farm Journal, Box 1927, Philadelphia, Pa. 19105. Or get the report free with your order of the *Estate Planning Idea Book*, available from the same address for \$14.95 plus 70¢ delivery charge. Both items are tax-deductible. ◀



Their victory will save Minnesota farm widows millions in state inheritance taxes. Leona Nordby, right, wouldn't settle out of court. Her attorney, Jon Stafsholt, left, believed in Leona and her cause, but had doubts of a favorable verdict from the judge.

Photo: Felix Farrer

Two states recognize a farm wife's worth

Landmark court victories in Minnesota and Wisconsin may help more women win estate tax cases

By LAURA LANE

ate in the Twentieth Century we still have pioneers, and I am fortunate to know one. Her name is Leona Nordby, and she is a soft-spoken, well-groomed, fiftyish farm widow who lives in Grant County, Minn. Leona did something no Minnesota farm woman had ever done before: She won a fight with the state's Commissioner of Revenue in an inheritance tax case.

You can even put a price tag on what her victory means to other farm women—\$2,500,000 is the amount of revenue the state will not collect this biennium because of the decision in

This is the second of two articles about farm widows who have won court battles in estate tax cases.

Leona's favor. That's money which in the past has been paid by farm widows who had held farm property in joint tenancy with their husbands. Add another \$1.7 million usually forked over by widows who have been deeply involved in other kinds of family businesses.

Money (about \$4,000 in taxes) was important, but it wasn't the prime consideration in the case of *Leona Nordby vs. Commissioner of Revenue*. Her fight was for justice for herself and others.

The principal issue was whether the full value of the joint property was subject to inheritance tax at the death of Leona's husband, Lewis M. Nordby. Leona had contributed equal effort to earning income that enabled the couple to buy the property in the first place, so Leona contended she owed inheritance tax on only half—her husband's half. FARM JOURNAL readers have known for years about this legalized discrimination that puts no financial value on a woman's farm work in field, barn or office. It isn't recognized as "money or money's worth" in common-law states (42 of the 50).

When Leona filed her state inheritance tax return following her husband's death, she based her payment on half-ownership plus a widow's exemption, with full knowledge that she was asking for trouble. As her attorney, Jon Stafsholt of Elbow Lake, had

foreseen, the Commission of Revenue rejected Leona's claim. The next step was to appeal to the state Tax Court.

Stafsholt felt the Minnesota statute discriminated against women in practice if not in language and was eager to challenge the interpretation.

Several factors favorable to Leona's case were listed for me by attorney Stafsholt:

- The case could be heard on home ground—in the courthouse at Elbow Lake, thanks to new Minnesota Tax Court procedure.
- The presiding judge had been a country lawyer earlier in his career, so he knew something about farm women's work habits.
- The Minnesota Legislature was considering an Equal Rights Amendment at the time.
- A few months before, a Wisconsin widow, Doris Kersten, had won a similar action against the Department of Revenue in her neighboring state (more about this case later). Attorney Stafsholt says: "Actually, the Kersten case has almost no bearing on Minnesota law, but knowledge of a decision like that puts the judges in tune with the trends."

The gloomy factor was that no one had ever successfully challenged Minnesota's Inheritance Tax Department on "the widow's tax."

Revenue Department officials tried to settle out of court with Leona before the case came to trial. First they offered to exclude 20% of the estate from Minnesota inheritance tax, then 25%, then 30% and finally 35%. That posed a real dilemma. Stafsholt explained to me:

"I told Mrs. Nordby it was probably in her own interest to accept that offer—the dollar amount wasn't significantly less and it was a sure thing. Taking the appeal to court was risky, as I had warned her.

"She thought about the offer for a week and then asked again: 'If I settle out of court, will this help other farm women?' I told her, no it wouldn't. That settled the matter. She said, 'Let's go to court then.' It was a courageous decision."

Testifying in Leona's behalf were people who knew her well: two farmers—a neighbor and her husband's brother; her own brother and Leona herself. . . "an excellent, soft-spoken witness," Stafsholt describes her. She



Stafsholt considers *Leona Nordby vs. Commissioner of Revenue* the most important case of his career thus far. His client, Nordby, now rents out the farm and works as a nurse's aide in an Elbow Lake Hospital. She says the case has changed her life and views in several respects.

followed his two bits of advice: "Think before you reply to a question. Tell the truth."

What the testimony revealed: Shortly after Leona and Lewis married, both were employed by an elderly bachelor farmer—Lewis as a hired man and Leona as a housekeeper. That was in 1936. They rented a place in 1939 and borrowed to buy their own 160 acres in 1947, after a lot of worry and pencil pushing. Sometimes they had dairy cows, sometimes sheep and beef cattle, usually hogs, chickens and turkeys, often ducks and geese.

The work and worries of farming—as well as the rewards—were always shared. Leona milked and helped care for animals and poultry, prepared meals for hired help, treated seed, loaded fertilizer, cleaned and repaired buildings and equipment, operated farm machinery, helped with bookkeeping and tax returns. She and Lewis borrowed money together and they shared a bank account.

When Lewis was incapacitated, Leona became the farm operator—for about a year at a time. Once was when Lewis had an operation for a slipped disc and again later when he was injured in an accident with a tractor-pulled spray rig. Later she took over when Lewis became too ill to work. He died of cancer in 1976.

A key point that attorney Stafsholt made in the court proceedings: If Leona had divorced Lewis instead of

nursing him and carrying on the farm operation, she would have been entitled to half of his assets under Minnesota law. Why should she be financially penalized for 40 years as a working partner in a good marriage? "The legislature certainly did not mean to reward divorcees and penalize widows," Stafsholt says.

Judge John Knapp, who wrote the unanimous opinion of the Tax Court, picked up this point: "If the rights of ownership in jointly owned property are recognized in divorce proceedings, there is no reason in logic or equity to ignore these same rights in inheritance tax cases."

"The work and contributions made by each spouse in operating a family farm should be recognized as being adequate consideration in money or money's worth in considering a claim of ownership in at least a portion of the property which passes to the surviving spouse upon death. In the instant case, we have found that the contributions of each spouse were substantially equal."

That was on Feb. 17, 1978. In April, then Governor Rudy Perpich announced that the state would not appeal the ruling, and that the Department of Revenue would "extend the principle to women who participate in any family business."

A landmark case has repercussions for client and attorney.

Leona Nordby's victory saved her

some inheritance tax money, and she gladly used part of it to pay attorney's fees. She remains an unassuming woman though she has been much photographed and interviewed by the Minnesota press. What changed?

1. Estate and inheritance taxes and laws that discriminate against women have become a consuming interest. She values the praise of those who recognize the magnitude of her contribution, and accepts philosophically the criticism of "some people who don't approve of what I did."

Leona's decision to engage in a legal struggle was prompted in part by the experiences of a widowed cousin in another state who, because of lack of documentation, had been obliged to pay inheritance tax on her own property as well as on property jointly owned. The cousin never fought her case. Leona considered for several months whether to go to court.

"I kept thinking, 'Boy, how I had worked.' To say that the results of 40 years' labor belong only to one is an insult to both members of a marriage. I felt it was the right thing to do [to go to court] and the right time to do it, and I proved to be right."

2. Leona lost her prejudice against lawyers. She credits a daughter-in-law, Marlyce Nordby, a paralegal aide in Minneapolis, with her change in ideas, and says, "An attorney can be as eager as a client to get justice and to help you in the process."

Jon Stafsholt considers the Nordby case the most significant in his career thus far, because of its widespread social impact: "It's the beginning of the end of farm wife discrimination." He was asked to write about it for a Minnesota legal journal, and he has conducted three seminars for the Minnesota Bar Association. He also has received appreciative letters from farm wives and from attorneys.

More farm women should use the courts to get their just due, Stafsholt believes. He says: "Legislative bodies and the executive branch of our government are sensitive to the pressure of majorities, but our courts still are sensitive to the rights of minorities." That's what farm and ranch women are—a minority.

A favorable decision helps other cases—in fact, there's a slow-but-sure domino effect.

Numbers of Wisconsin women have

profited from Doris Kersten's victory in the state's Supreme Court, March 2, 1976 (In re Estate of Kersten, 71 Wis. 2d 757).

Records of the court proceedings give these facts:

"Lester and Doris Kersten devoted all their working efforts during marriage to operating the farm. Almost all that was owned by the couple at the death of Lester Kersten had been acquired by them during marriage. Neither inherited anything. Lester and Doris Kersten made substantial capital improvements to the farm, all of which were paid for from farm profits. . . expansion of milking facilities, remodeling of the house, and addition of several structures, including a silo, machine sheds, milk house, heater barn and garage.

"In addition to maintaining the household (the couple raised four children), Doris helped keep the farm books, cared for and trained the calves, helped with the milking, operated the tractor during [hay] baling, and generally assisted her husband in the farm work.

"Additionally, Doris Kersten ran the farm alone for two periods of time during which her husband was ill. However, she testified that neither would have successfully operated the farm without the continuing assistance of the other.

"On cross-examination, Doris Kersten testified that there was never a written partnership or joint venture agreement between herself and her husband.

"Doris Kersten never reported personal income for either federal or state income tax purposes. The milk check, the primary source of farm income, was made out to Lester Kersten. Farm income was reported by Lester Kersten as his income for Social Security purposes."

The trial court (Marathon County Court) had determined that, with two exceptions (property Lester already owned when he married Doris and one certificate of deposit), the balance of the jointly owned property should be taxed on a "50/50 basis." It ordered the Commissioner of Revenue to refund \$2,911.01 of inheritance tax to Doris, the personal representative (executrix) of Lester's estate. That's when the Department of Revenue appealed the case.

In his decision favoring Doris, Wisconsin Supreme Court Judge Robert W. Hansen said: "So the issue in this case narrows to whether Doris Kersten's personal services on the family-operated farm constituted 'consideration in money or money's worth' in return for her interest in the property jointly held by her and her husband. . .

"We agree with the trial court and affirm its holding that Doris Kersten was entitled to credit for inheritance tax purposes for such contribution on her part to the jointly held property. . . Victory for Doris!"

Elsewhere in his decision Judge Hansen quoted extensively from the federal Tax Court case *Estate of Everett Otte vs. Commissioner of Internal Revenue* (see "They sued the IRS and won," FARM JOURNAL, Aug., 1979). This case established that the contribution by Lura Otte of personal service as a wife "who kept the farm records and took an active part in the day-to-day operation of the farm, fairly justifies a division of the property required during her marriage."

To sum up, Lura Otte helped Doris Kersten.

Both Lura Otte and Doris Kersten helped Leona Nordby.

And Leona Nordby's case was cited in the successful suit of *Bessie Craig vs. The United States of America* (District Court, South Dakota, 1978).

None of these four women knows the other. None was aware she was helping anyone but herself. But the collective heroism of these four may benefit every wife who is a working partner with her husband . . . for all time to come. ◀

MORE ON ESTATE PLANNING

Laura Lane's detailed report, "How the Revenue Act of 1978 Affects Your Estate Plan," is just off the press.

To order, send \$1 plus 40¢ delivery charge to: Revenue Act, FARM JOURNAL, Box 1927, Philadelphia, Pa. 19105. Or get the report free with your order of FARM JOURNAL's *Estate Planning Idea Book* by Laura Lane, available from the same address for \$14.95 plus 70¢ delivery charge. Both items are tax-deductible.

Farm and ranch people are in estate tax trouble again because of increased values of land, equipment and livestock. These examples show why it has become harder to save the family farm business and why estate tax laws need updating:

- "We have just been through the long three-year settlement of my mother-in-law's estate . . . On the 320-acre farm where my husband and I live, over \$1 million dollars has been paid in estate taxes in less than 100 years."—Betty Brand in April 1981 newsletter of Illinois Women for Agriculture.

- "My husband's family and mine have been farmers for generations. The inheritance tax has broken up farms belonging to both families. We are victims, and if our income doesn't improve, my husband and I won't own a farm to pass along.

federal estate tax law. We are just beginning to realize what inflation of land values has done to us, resulting in bracket leap of estate taxes when an owner dies. That's why Washington Women for the Survival of Agriculture are for the greatest simplification of the estate tax system, tax-free transfers between spouses, and eventually total repeal."

—Janet Allison, chairman of government relations.

Endangered: "Today family businesses are an endangered species. We have spent billions to preserve endangered plants, animals, fish and birds. If individuals really are important, this is one of the best chances Congress will ever have to prove it."—Ben Wallis Jr., Texas attorney and rancher.

Proposal to Congress: "With a fixed estate and gift tax credit such as we have now, Congress has to tink-

Why you should work to rewrite tax law



LAURA LANE

"My grandfather died just 10 months before my father, so the estate had to pass through the courts twice before anyone could benefit. The land in my grandfather's estate had to be sold to pay the tax.

"When my father-in-law died, my mother-in-law had to mortgage the farm to pay the estate tax. She was in her 60s, alone, without income or job skills.

"In each of these instances, if the women had died first, the surviving husbands would have paid no estate tax. It is my firm belief that property should pass untaxed from husband to wife, as it does from wife to husband."—Peggy Arensman, Kansas Women Involved in Farm Economics (WIFE).

Key points made at recent hearings on estate and gift taxation:

The revenue issue: "The quote most often heard from members of Congress who favor continuation of the estate tax is, 'We cannot lose the revenue.' In 1980, the revenues from estate taxes amounted to about \$6 billion of the total federal collection of \$466 billion (about 1.4%). Those who emphasize revenue usually quote the gross amount received. The cost of administration (by IRS) is never subtracted. Is the government netting revenue or just exchanging dollars?"—Doris Royal, Nebraska, co-chairman, taxation committee, American Agri-Women.

Effects of inflation: "Most farmers never thought their modest holdings would be affected by

er constantly with tax laws and rates just as you have done in 1976, 1978 and 1980. This is an expensive way to govern people's financial affairs, and it puts a costly burden on tax-paying citizens who in good faith revise their wills, break up joint tenancies, incorporate, create trusts and then have to do it over again because Congress changes the rules. The simplest solution would be to set an ample unified credit and peg it to the rate of inflation. That would save the family farm for now and for the future."—Laura Lane, contributing editor, FARM JOURNAL.

Recent history proves you can influence Congress if you speak up emphatically.

- The collection of 236,248 signatures of farm people on petitions to Congress was a big factor in passage of the Tax Reform Act of 1976. These petitions were printed in FARM JOURNAL and delivered to Washington. The kickoff to this big campaign was the article "Let's Get Rid of the Widow's Tax," Sept. 1975.

- More pressure by farm people helped kill the carry-over-basis provision ("Let's Get Carry-over Basis Repealed," Mid-February 1979). Congress repealed it in the Windfall Profits Tax Act.

In the past six years, FARM JOURNAL has published 61 separate articles on estate taxation and estate planning. The magazine can supply the ammunition, but vocal, persistent farm and ranch voters are the ones who get the job done in Washington. ◀

We make it easy for you to urge Congress!

To make your voice heard where it counts, all you need to do is tear out the card insert to the right of this page, fill it out, put a stamp on it and put it in the mail. □ But do this today so FARM JOURNAL can compile totals fast and pass along the results of our poll to Congress and to President Reagan. □ This card can help save your family business.

Taxing Matters

Edited By Richard Greene

Everybody knows you can't take it with you—but if you own your own business, you might not be able to leave it behind either.

The death tax

By Jon Schriber

WHEN WILBUR DOYLE got out of the service in 1947 and founded Doyle Lumber in Martinsville, Va., he didn't know he would someday wind up paying, on average, 20% of his earnings on a life insurance policy—with Uncle Sam the ultimate beneficiary. Doyle's little business has prospered—with \$6 million in annual sales, it's now the fifth-largest lumber company in Virginia and is worth about \$3 million. Yet to insure that his sons won't have to sell it to pay estate taxes, Doyle keeps paying those premiums. This year—an off year for the business—Doyle predicts they'll amount to more than the company's total earnings.

In Mars, Penna., Harry G. Austin, 65, and his brother John, 55, the only stockholders in \$8 million (sales) James Austin Co., a soap manufacturer, pay around \$20,000 each in premiums so their 92-year-old company can be passed down to the fourth generation. "Sometimes I think we're really working for the insurance company," says Harry.

Wilbur Doyle and the Austin brothers aren't alone in worrying about the future of their businesses when they're gone. A survey by the National Federation of Independent Business found that among its 539,000 members, death taxes are a close second to concerns about changes in individual income taxes. Says Mike McKeivitt, a lobbyist at the federation: "At any small business group, if you want to see them come right up out of their chairs, start talking about death taxes." No wonder. In many cases—perhaps most—if the founder can't af-



ford the premiums Wilbur Doyle pays, his heirs will not be able to keep the company when he dies.

Small businessmen and their supporters have already gotten to their feet and are taking their case to Washington. Senator Steve Symms (R-Idaho) has introduced a bill to repeal current estate and gift tax laws. The Reagan Administration originally came out in favor of repeal but recently backed off, citing budgetary restraints. Still, it's a safe bet that the Administration will have some recommendations next fall.

Moreover, this month the House Ways & Means Committee may consider a bill to increase individual estate tax exemptions to \$600,000 and to cut the taxable value of qualified businesses by 50%. The measure also would broaden the definition of what qualifies as a closely held business. Former Ways & Means Chairman Al

Ullman, who helped organize a lobbying group for the bill after he left Congress this year, thinks "the chances are excellent" the measure will pass.

About \$6 billion a year goes into the U.S. Treasury from estate and gift taxes. Ullman and other champions of death-tax reform argue that the breakup of family businesses, the loss of jobs and other dislocations, can cause an ultimate tax loss that could offset this revenue. David Raboy, director of research at the Institute for Research on the Economics of Taxation, contends the tax forces people into "un-economic decision making." Says he: "It discourages people from investing in the things that are productive."

As an example he mentions a small foundry: that may be a very good productive investment, but an entrepreneur will be reluctant to make the necessary capital commitment. "He knows that if he dies they're going to have to sell off part of it to settle the estate. Clearly that's going to discourage you."

Besides the negative impact on the economy, Raboy points out, the taxes are not fulfilling their original purpose. That purpose, of course, was to prevent great concentrations of wealth, like the Rockefellers' or du Ponts', from being passed on from generation to generation. But the great fortunes remain, while the impact of the tax, at least initially, is falling right on the middle class. Inflation puts it there, of course.

But, while waiting for reform, what are folks like Wilbur Doyle going to do? There are some solutions. For example, each year you can give up to \$3,000 away to anyone you want, and to as many recipients as you want,

Taxing Matters

Wilbur Doyle thinks it's necessary to go on paying those crushing life insurance premiums. "During my years in business I've seen some 25 good companies become nonviable when the principal died. They just didn't have the cash flow to pay their bills."

without paying gift taxes—a married couple can give \$6,000 a year. Over and above that, there's a lifetime maximum of \$175,000 for an individual or \$350,000 per couple. So theoretically, a couple can give \$6,000 a year to their heirs for 40 years, with each child winding up with a quarter of a million dollars and the estate with an additional exemption of \$350,000. The problem with this—apart from whether a young couple can afford to give away \$6,000, \$12,000 or \$18,000 a year, is that many people are reluctant to give. "They get cold feet," says Warren Shine, a tax principal at the accounting firm of Ernst & Whinney. "They say, 'maybe next year.'"

So what if this \$350,000 allowance is not used and the husband dies? Assuming the business is in his name, the estate is allowed to take a marital deduction of \$250,000 or 50% of the adjusted gross estate, whichever is more. Take an estate valued at \$1 million. First the administration and funeral expenses as well as claims against the estate can be deducted—in this instance, say \$100,000. Half the remaining \$900,000 adjusted gross estate is subtracted, leaving \$450,000. After deducting a unified tax credit of \$47,000, the tax due is \$91,800.

But all this—plus deferred payment provisions which may help stretch out the taxes—frequently leaves the business with a severe drain on cash flow. One solution is recapitalization, in which the founder or owner issues preferred stock to himself in return for his common shares. It works like this: The owner gets the company appraised for market value, let's say \$1 million. Assume he has 75% of the common, and through gifts over the years, his son has 25%. The father exchanges his \$750,000 worth of common for a like amount of preferred, which pays a dividend, say 15% of par, cumulative.

The father's share in the company is now locked in at three-quarters of a million dollars. If he dies ten years later estate taxes will be due on only that amount. All the *growth* in the company has become the property of the son, so that even if the company quadruples in value the father's estate is still only \$750,000.

There are some pitfalls to this. The IRS may disagree with the original valuation, and the father may have to pay some gift taxes (if the father did not take out enough value in his preferred stock, in effect he gave his son a gift). Some people can have second thoughts, too. Charles Bogen of Ernst & Whinney tells of a client for whom

he did a recapitalization 12 years ago. The business, valued at \$1 million then, is now worth about \$12 million. Says Bogen: "The old man said, 'Look what you did to me. You took all my money.' I told him, 'Yes, but we also took it away from Uncle Sam, and we took more away from him than we took from you.' He's still mad at me. But the sons love it."

All this may help, but for many small businessmen, perhaps not enough. Wilbur Doyle, for example, thinks it's necessary to go on paying those crushing life insurance premiums even though he has recapitalized his business. "During my years in business I've seen some 25 good companies become nonviable when the principal died," he says. "They just didn't have the cash flow to pay their bills."

The Austin brothers haven't recapitalized their soap company at all. "My brother and I each have children working in the business," Harry says. "How do you know 20 years from now which one is going to be in and which one is going to be out?"

In the meantime, the Austins continue to pay those hefty insurance premiums, adamant that the firm remain a family business. But the real truth is that with the Austins—as with so many others—the family is not really the most injured party if the taxes force the firm to be sold out or closed. Elder brother Harry says that if the worst were to happen and the firm had to be put on the block, the heirs would be all right, they would still have enough to live on.

It would be the town of Mars (pop. 1,400), where Austin's soap company is the single largest employer, that would suffer the most. Why? "Certainly if a national firm, any of the big soap companies, bought the company to get the label franchise, why, I doubt they would operate here," Austin explains. "The little town would economically go down the tube." There have been offers already from large corporations for Austin's company, which serves a 500-mile radius of Pittsburgh. Indeed, you could hardly expect a conglomerate like Gulf & Western or Litton to have any kind of emotional attachment or loyalty to Mars. Small family businesses aren't just moneymakers for families—they are an integral part of the economies of small towns from coast to coast.

Wilbur Doyle knows that. But sometimes he wears out of the whole mess. "Once in a while," he says, "I think, why shouldn't I just blow the money and have a good time?" ■



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

May 10, 1983

MEMORANDUM

To: Representative Mae Tischer
From: Leonard Steinberg, Research Staff *Leonard Steinberg*
Re: Estate Taxes -- Research Request 83-154

Gail Thibodeau of your office asked for the following state and federal estate tax information:

- 1) the justification for the taxes;
- 2) the amount of income received from these taxes for the last four years;
- 3) the percentage of total revenue represented by estate taxes;
- 4) the amount of estate tax revenue collected by Alaska from residents and non-residents; and
- 5) the hardships that may result from estate taxes.

Justification for Estate Taxes

Estate taxes originated with the Populist political movement in the United States; the goal was to reduce certain excise taxes by taxing the wealthy. The federal government has levied a tax on the transfer of wealth at death continuously since 1916.

The primary reasons Congress passed the estate tax in 1916 were:

- 1) redistribution of wealth by breaking up large concentrations of wealth at the time of death; and
- 2) raising additional revenue for the federal government.

Another justification for estate taxes is that the appreciation in value that occurs between the time property is acquired and a person's death is income which normally escapes income taxation; estate taxes recoup part of this loss.

Representative Mae Tischer
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Following its imposition, individuals avoided the new estate tax by giving away large portions of their wealth prior to their death. Consequently, Congress has imposed a gift tax since 1932. The gift tax rate was substantially less than the estate tax rate until the two were unified by the Tax Reform Act of 1976.

The justifications for state estate taxes are the same as for federal estate taxes. However, according to Mr. Joe Donohue, Deputy Commissioner of Revenue, Alaska has the additional justification that its tax brings in revenue to the State without increasing the tax liability of an estate. Mr. Donohue explained that Alaska's estate taxes are credited, dollar for dollar, against the taxes that would otherwise be paid to the federal government. Therefore, until federal estate tax law is changed, a reduction in Alaska's estate taxes will not present a savings to the estate but only increase the revenues paid to the federal government.

Estate Tax Revenues

The amount and number of State estate tax collections, their percentage of total State revenue, and the amount of State revenues are listed below in Table 1. In fiscal year 1982, 325 estates filed tax returns with the Department of Revenue; 317 (86 percent) of the filed returns received a certificate of non-tax liability while 52 (14 percent) had taxes to pay. The estate tax revenues received in 1982 are not directly related to the 1982 returns because estates have 15 months to make their payments and are frequently granted 10-15 year extensions. Estate taxes during the period 1978-1982 have always been substantially less than one-half of one percent of the State's total unrestricted revenues.

Table 1

State Estate Taxes and Unrestricted State Revenues -- FY1978-1982

	1982	1981	1980	1979	1978
# of State Estate Tax Returns*	325	369	382	407	334
# of Paying Returns* †	52	42	N/A	57	55
State Estate Taxes Collected	\$334,676	\$453,492	\$197,592	\$136,685	\$244,143
State Unrestricted Revenues(\$millions)	\$4,108.4	\$3,718.2	\$2,501.2	\$1,133.0	\$764.9
Estate Taxes as a % of State Revenues	.008%	.012%	.008%	.012%	.032%

* These figures are for calender years and are based on the number of certificates issued for tax and non-tax liability.

† Eighty to ninety percent of state estate tax returns result in the the Department of Revenue issuing certificates of non-tax liability; those returns which actually impose State estate tax liability are listed in this column.

According to Ms. Eloise Herrick of the Department of Revenue, State estate tax records do not break down the revenues collected by residency status. However, Ms. Herrick stated that in her opinion, very little revenue is collected from non-residents. A more accurate determination of how much money was collected from residents and non-residents would require corrolating the revenues received with individual returns and reviewing each individual return to determine residency status; because this would require substantial time and effort, we have not pursued this information at this time.

Table 2 below illustrates the number of federal estate tax returns and the revenues collected by the federal government from both Alaska and the nation. The table also shows the percentage of total federal revenue represented by estate taxes. For example, in federal fiscal year 1982, 159 estate tax returns were filed with the federal government from Alaska and 134,965 were filed nationally. The federal government collected approximately three million dollars in estate taxes from Alaskans and eight billion dollars nationally in 1982. Estate taxes contributed 1.3 percent of the total federal revenue received in 1982.

Table 2
Federal Estate Taxes -- Federal FY1978-1982
 (\$ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Federal Estate Tax Returns	159	152	145	156	129
Total # of Estate Tax Returns Filed	134,965	145,617	148,228	159,404	160,152
Estate Taxes Paid by Alaskans	\$3,081	\$2,097	\$2,285	\$2,689	\$2,412
Total Estate Taxes Paid	\$8,035,335	\$6,694,641	\$6,282,247	\$5,344,176	\$5,242,080
Estate Taxes as a % of Total Revenue	1.3%	1.1%	1.2%	1.2%	1.3%
Total Federal Revenue	\$626.8* (bil.)	\$599.3 (bil.)	\$517.1 (bil.)	\$463.3 (bil.)	\$399.6 (bil.)

* Estimate

Federal gift taxes, because they were created to stop estate tax avoidance, are often evaluated in conjunction with federal estate taxes. Table 3 presents information on federal gift taxes. As Table 3 illustrates, gift taxes add relatively little to federal revenue collections.

Table 3

Federal Gift and Estate Taxes and Total Revenues -- 1978-1982

(\$ in thousands)

	1982	1981	1980	1979	1978
# of Alaska Gift Tax Returns	98	252	252	260	193
Total # of Gift Tax Returns Filed	99,533	198,620	215,983	201,785	195,194
Gift Taxes Paid by Alaskans	\$37	\$15	\$66	\$117	\$60
Total Gift Taxes Paid	\$108,038	\$215,745	\$216,134	\$174,899	\$139,419
Total Gift Taxes as a % of Total Revenue	.02%	.04%	.04%	.04%	.03%
Total Federal Revenue	\$626.8* (bil.)	\$599.3 (bil.)	\$517.1 (bil.)	\$463.3 (bil.)	\$399.6 (bil.)

* Estimate

Hardship Cases

Information regarding the frequency of cases in which a family must sell everything to pay estate taxes is not readily available. Large real estate holdings, such as farms, pose the most common hardships; families have reportedly been required to sell farms to pay estate taxes. However, due to the urgency of completing this request, we have not been able to provide a substantive response to this question. Please let us know if you would like additional research performed on this issue.

Several changes to federal tax laws have attempted to reduce the hardships that may result from estate taxes. The Tax Reform Act of 1976 made the following changes:

- increased the value of estates which can escape taxation from \$60,000 to \$175,000;

Representative Mae Tischer
May 10, 1983
Page Six

- allowed farms and other closely held businesses to be valued at less than fair market value; and
- increased marital deductions.

The Economic Recovery Tax Act of 1981 also attempted to reduce hardships by:

- further increasing the value of estates exempt from taxation to \$600,000;
- increasing the amount by which farms and closely held businesses can be undervalued; and
- allowing for unlimited transfers of property among spouses.

Furthermore, the 1981 Act extended the payment period for certain estate taxes to 15 years, and lowered the tax rates from a maximum of 70 to 50 percent.

* * * * *

We hope this information is helpful to you. Please let us know if you would like us to do any additional research.

LS

HJR

52

Alaska State Legislature



REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

POUCH V
JUNEAU, ALASKA 99811

April 30, 1984

M E M O R A N D U M

To: Representative Bussell, Chairman House Judiciary Committee
From: Representative Bettisworth *RHB*
Subject: HJR 52, Proposing an amendment to the Constitution of the State of Alaska to provide for a biennial budget.

Over the past several years the time required to generate annual budgets, both operating and capital, has been increasing every budget cycle. The experiences of other states that have adopted the biennial budget format seem to indicate that significant improvements in planning and cost reductions are likely. The following specific improvements are attainable:

- 1.) Operating budget preparation costs would be reduced in most instances in the following ways:
 - a. reduced professional and clerical staff cost,
 - b. reduced staff support costs for budget preparation,
 - c. reduced departmental workload conflicts during the peak months of activity (budget preparation by key staff often occurs at the same time program management load is at its peak).
- 2.) A biennial budget would afford improved legislative program review since only major changes in fiscal requirements or an emergency situation would require substantive legislative action by agencies or the legislative branch in off budget years.
- 3.) Savings realized from implementation of a biennial budget cycle could be used for other purposes; ie., delivery of services and support of other priorities.
- 4.) The capital project planning process would be enhanced by implementation of a biennial budget cycle.

AMENDED TITLE:

PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE STATE OF ALASKA TO PROVIDE FOR A BIENNIAL STATE BUDGET .

PRIME SPONSOR: BETTISWORTH.

CO-SPONSORS: PESTINGER.

CURRENT STATUS: 3/08/84 IN (H) JUDICIARY

REFERRAL: FINANCE

HJR 52 HOUSE ACTION

15:02 4/27/84 PAGE 2 OF 2

DATE SEQ PAGE

LEGISLATIVE ACTION

01/09/84 01 2202
03/08/84 02 2854

FIRST READING -- COMMITTEE REPORTS
S.A. -- DP05, NR02
JUDICIARY
FINANCE
RULES

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HJR 52



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

February 17, 1984

MEMORANDUM

Representative Bob Bettisworth
Attention: Ralph Bennett

FROM: O. Alexander Hoke *O. Alexander Hoke*
Legislative Analyst

RE: Impact of Biennial Budgeting on Cash-Based Budgeting
Research Request 84-040

As you requested, this memorandum addresses the impact of legislation which initiates biennial budgeting (HJR 52 and HB 485) on the proposal to institute cash-based budgeting in the state (CS HJR 39).

Multiple Interpretations of Biennial Budgeting

The implications of having both biennial budgeting and cash-based budgeting approved by the voters in the upcoming general election depends substantially on the ultimate legislative interpretation of these budgeting concepts. As discussed in David Teal's November 25, 1983 memorandum to you, biennial budgeting has different meanings in the states in which it is practiced. Nine states have both biennial sessions with biennial budgets and special provisions for amending the budget on an annual basis. Twelve states have annual sessions with biennial budget cycles, and provide for full legislative review of the budget each year. Of the 21 states with a biennial budget, all but four make separate appropriations for each year of the biennium. Biennial budgeting practices among the states range from systems almost indistinguishable from annual budgeting to true two-year budgets with allowances for only minor (or emergency) amendments.

Biennial budgeting under HJR 52 and HB 485 seems to qualify as a true two-year budget and appropriation cycle. Biennial budgeting in HJR 52 calls upon the governor to submit "a budget for the next two fiscal years setting forth all proposed expenditures and anticipated income ...with a general appropriation bill to authorize the proposed expenditures..." The companion bill (HB 485) states that "the biennial budget shall contain appropriations for the succeeding two fiscal years and state agencies shall prepare their budgets on this basis."

The Intent of Cash-Based Budgeting

The intent of cash-based budgeting (as defined by HJR 39) is to eliminate "revenue uncertainty" by restricting appropriations for a given fiscal year to the level of total General Fund unrestricted revenues for the preceding calendar year. HJR 39 provides for a cash reserve equal to 1.5 times the appropriations of the fiscal year preceding the start of cash-based budgeting. With this cash reserve, the legislature can be certain that funds are available to cover expenditures through the balance of the current fiscal year (6 months) and the coming fiscal year (12 months).¹

Revenue Certainty Under A Biennial Budget

An 18-month revenue reserve is needed when cash-based budgeting applies to a 12-month budgeting period. If the State adopted a two-year (24-month) budget period through biennial budgeting, cash-based budgeting would require a 30-month cash reserve in order to provide full certainty that available funds are sufficient to offset expenditures over the budget period. With a 30-month reserve, the legislature would know at the beginning of the session that funds were available to cover expenditures through the remainder of the current budget period (6 months) as well as the coming budget period (24 months).

Table 1 shows the fiscal impact of combining the concepts of biennial budgeting and cash-based budgeting (as defined by HJR 39) for a 30th percentile revenue projection. The fiscal impact of these two proposals is the requirement of annual contributions (column 7) of general funds of between \$267 and \$358 million for a 12-year period, totaling \$3.686 billion. The underlying assumption of this calculation is that the legislature intends to prepare a two-year budget and wants to be certain that funds will be available to cover the total appropriation for the two-year budget.

In comparison with a two-year budget cycle, the cost of cash-based budgeting as defined in CS HJR 39 is \$2.866 billion (sum of contributions shown in Table 2), or \$820 million less than the cost of cash-based budgeting under a true biennial budget cycle.

¹See House Research Agency report 83-A; Cash-Based Budgeting: A Response to Revenue Uncertainty.

Table 1

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a 30th Percentile Revenue Projection
(millions of dollars)

Fiscal Year	DOR	Revenue	Potential	General	General	...Cash-Based Budgeting Reserve Fund...		
	Revenue Forecast	Under CBR	Expenditure Level	Fund Earnings	Fund Balance	Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,624		3,624	266	2,660			
1984	3,233		3,233	300	3,000			
1985	3,219		3,219	250	2,500			
1986	3,365	3,069	3,069	259	2,590	296.1	14	310
1987	3,729	3,401	3,401	288	2,880	328.2	48	666
1988	3,711	3,384	3,384	288	2,880	326.6	87	1,109
1989	4,068	3,710	3,710	318	3,180	356.0	132	1,590
1990	3,880	3,539	3,539	301	3,010	341.4	183	2,114
1991	3,582	3,267	3,267	275	2,750	315.2	236	2,665
1992	3,536	3,225	3,225	270	2,700	311.2	294	3,276
1993	3,405	3,105	3,105	258	2,580	299.6	357	3,927
1994	3,290	3,000	3,000	247	2,470	289.5	425	4,641
1995	3,195	2,914	2,914	236	2,360	281.2	499	5,421
1996	3,033	2,766	2,766	222	2,220	266.9	580	6,269
1997	3,092	2,820	2,820	225	2,250	272.1	669	7,210
1998	3,159	3,890	3,063	960	10,327			
1999	3,213	3,969	3,491	1,007	10,845			
2000	3,245	4,029	3,939	1,016	10,945			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

- 2 Department of Revenue January, 1984 revenue projection.
- 3 Revenues after effects of cash-based budgeting program. During the CBR reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBR contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBR reserve fund balance to the general fund.
- 4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.
- 5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.
- 6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBR reserve fund.
- 8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.
- 9 The earnings rate of the CBR reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 8.0 percent.

Table 2

THE GENERAL FUND AS A REVENUE SOURCE FOR CASH-BASED BUDGETING
Based on a 30th Percentile Revenue Projection
(millions of dollars)

Fiscal Year	DOR Revenue Forecast	Revenue Under CBB	Potential Expenditure Level	General Fund Earnings	General Fund BalanceCash-Based Budgeting Reserve Fund....		
						Contributions	Earnings	Balance
1981	3,769		3,769	201	2,010			
1982	4,174		4,174	254	2,540			
1983	3,624		3,624	266	2,660			
1984	3,233		3,233	300	3,000			
1985	3,219		3,219	250	2,500			
1986	3,365	3,069	3,069	259	2,590	296.1	14	310
1987	3,729	3,401	3,401	288	2,880	328.2	48	626
1988	3,711	3,384	3,384	288	2,880	326.6	97	1,100
1989	4,068	3,710	3,710	318	3,180	358.0	132	1,590
1990	3,880	3,539	3,539	301	3,010	341.4	183	2,114
1991	3,582	3,267	3,267	275	2,750	315.2	236	2,665
1992	3,536	3,225	3,225	270	2,700	311.2	294	3,270
1993	3,405	3,105	3,105	258	2,580	299.6	357	3,927
1994	3,290	3,000	3,000	247	2,470	287.5	425	4,641
1995	3,195	2,844	3,348	685	7,297			
1996	3,033	3,483	3,467	672	7,174			
1997	3,092	3,540	3,564	673	7,180			
1998	3,159	3,617	3,512	697	7,325			
1999	3,213	3,680	3,578	698	7,447			
2000	3,245	3,718	3,648	705	7,527			
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

col.

- 2 Department of Revenue January, 1984 revenue projection.
- 3 Revenues after effects of cash-based budgeting program. During the CBB reserve contribution period, revenues (column 3) are equal to DOR projections minus annual CBB contributions. Starting with the first cash-based budgeting year, revenues (column 3) are equal to DOR projections plus additional earnings which accrue to the general fund as a result of transferring the CBB reserve fund balance to the general fund.
- 4 Expenditure levels are presently limited to projected revenues (ignoring the Constitutional appropriation limit). Beginning with the first cash-based budgeting year, expenditures will be limited to the revenues collected in the previous calendar year.
- 5 General fund earnings are DOR projections up to the start of cash-based budgeting, at which point the general fund earnings will be augmented due to the increased earnings capacity of the general fund from that point on into the future.
- 6 Beginning with the first cash-based budgeting year, the general fund balance is substantially increased by the transfer of the CBB reserve fund.
- 8 Reserve fund earnings are calculated at a 10 percent annual interest rate compounded monthly.
- 9 The earnings rate of the CBB reserve fund is compounded monthly using a 10% annual interest rate.

This projection is based on a general fund unrestricted revenue contribution of 6.8 percent.

Representative Bettisworth

February 17, 1984

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Biennial Budgeting With Annual Review

If the State of Alaska budgeted biennially but with full legislative review annually, the effect would be little different from annual budgeting. Consequently, the impact of this type of biennial budgeting on cash-based budgeting would be negligible.

We hope that this information is helpful in your deliberations on biennial budgeting. If you have further questions regarding the relationship of biennial budgeting to cash-based budgeting, please give the agency a call.

OAH

Alaska State Legislature



POUCH V
JUNEAU, ALASKA 99811

REPRESENTATIVE

ROBERT H. "BOB" BETTISWORTH

211 CUSHMAN STREET
FARBANKS, ALASKA 99701

February 16, 1984

M E M O R A N D U M

To: Representative Mitch Abood, Chairman, House State Affairs
Committee

From: Representative Bob Bettisworth *YPHB*

Subject: HJR52--Proposing an amendment to the Constitution of
the State of Alaska to provide for a biennial budget.

It has become increasingly apparent to me since becoming a legislator, that the time consumed each session for budget related activities seems to be expanding each year. The experiences of other states that have adopted biennial budget cycles seem to indicate that the administrative agency budget preparation workload is reduced, program evaluation is enhanced by the increased time frames available for reviews, and long range planning opportunities are improved as well. Most observers of the budget process seem to agree, regardless of perspective, that improved planning mechanisms are essential and this is especially so in Alaska.

Some states now utilizing biennial budget cycles have found that legislative control over spending may be diminished. I don't think this problem is inherent in the system chosen but rather constitutes a lack of clear direction to the executive branch. Another criticism that jurisdictions have for biennial budget systems centers on the inaccuracy of revenue forecasts but this problem is already a major factor in Alaska and would not appear to be exacerbated by moving to a two year budget cycle.

Research indicates that the length of the budget cycle does not appear to have much effect on the level of state spending.

Variations on biennial budget systems are extensive among the states and it is likely that annual budget revisions--especially in operating budgets regardless of format--are a virtual certainty. Major time savings are likely to result by avoiding the current practice of complete annual budget preparation and legislative review. This is especially true for the operating budget and some savings would accrue in the capital budget area as well. Under most biennial budget scenarios, the comprehensive and time consuming operating budget review process could be significantly curtailed in off years and only essential program funding changes would have to be addressed.

HJR 52

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

RECEIVED
8-17-83

POUCH - STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

August 15, 1983

SUBJECT: Biennial state budget
(Work Order No. 13-1508)

TO: Representative Robert H. Bettisworth

FROM: Keith B. Levy *KBL*
Legislative Counsel

In drafting your bill request establishing a biennial state budget, I neglected to point out to you that Article IX, Section 12 of the Constitution of the State of Alaska requires an annual budget:

The governor shall submit to the legislature, at a time fixed by law, a budget for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments, offices, and agencies of the State. The governor, at the same time, shall submit a general appropriation bill to authorize the proposed expenditures, and a bill or bills covering recommendations in the budget for new or additional revenues.

Thus, your bill is technically in violation of this constitutional provision since it requires the governor to submit a budget every two years rather than annually.

This problem can be resolved in one of two ways. The first would be to amend Article IX, Section 12 of the constitution to provide for a biennial budget rather than an annual one. A more simple solution would be to redraft your bill to provide for a biennial budget, but require the governor to submit an amended budget every other year covering the second fiscal year of the biennial budget. In that way, the constitutional requirement would be met since the governor would be submitting a budget annually, but the bulk of the budget process would be completed biennially.

If you have any questions or if you would like a redraft of your bill, please feel free to contact me.

KBL:lmb
L2/049



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

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

November 25, 1983

MEMORANDUM

TO: Representative Rob Bettisworth

FROM: David Teal
Legislative Analyst

RE: Biennial Budgeting
Research Request R3-239

This memorandum responds to your request for information on states that have a budget cycle longer than one year. The Council of State Governments (CSG) and the National Conference of State Legislatures (NCSL) provided much of the information required to fulfill your request. Because the information received from these sources is concise and limited to the question at hand, only the highlights are reviewed in this memorandum. Material provided by the CSG and NCSL are attached.

In the early 1940s, only four states had annual legislative sessions. There are now only nine states with legislatures that do not convene annually. The budget process is the primary reason that many states have converted to annual sessions.

Attachment A classifies states according to the length of their budget cycle and the time between legislative sessions. As noted above, nine states have biennial sessions and operate under a two-year budget cycle. Of the 41 states with annual legislative sessions, 29 have a one-year budget cycle. The remaining 12 states are on a two-year budget cycle. No state has a budget cycle longer than two years. The 12 states that have annual sessions and biennial budgets have the potential for full legislative review of the budget each year. All of the nine states with biennial sessions have some procedure for amending the budget during the biennium. Procedures for amending the budget include special legislative action, delegation of authority to a legislative committee or emergency board, and executive branch transfers between agencies or programs.

The Council of State Governments and the Public Affairs Research Council of Louisiana surveyed states to obtain their views on annual versus biennial budgeting. Highlights from those surveys are listed below and the published survey results are attached to this memorandum.

Representative Rettisworth
November 25, 1983
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- Biennial budgeting reduces the budgetary workload (particularly for the executive branch), increases the time available for program evaluation, and may encourage long-range planning.
- Biennial budgeting may reduce legislative control over spending, provide less flexibility to meet requirements for receipt of federal funds or other purposes, and cause legislators to work with less accurate forecasts of revenue.
- Most states are satisfied with the system currently used in their own state.
- Most respondents felt that the length of a budget cycle had no significant effect on the level of state spending.

The conclusion of the Louisiana survey was that the success of a budget cycle seems to depend on the commitment of state officials to good implementation rather than on the method of budgeting. The Louisiana report also stated that the arguments used to support the systems are unproven; neither an annual nor biennial cycle is clearly superior to the other.

Budget Amendments Under Biennial Budgeting

Ken Kirkland, program director of the fiscal affairs section of NCSI, said that most states on a two-year budget cycle are unable to avoid substantial annual revision of their biennial budget. He added that some states on a biennial budget cycle avoid annual budget amendments by "overfunding" operating costs and relying on the executive branch to act in a fiscally conservative manner.

In those states where the budget process includes an annual review of a biennial budget, the budget process in the "review year" is often streamlined. State agencies are generally required to submit budget documents only for changes from the approved amounts instead of preparing a complete justification package. Maine, Iowa and other states that use this process claim that it combines the best features of both the annual and biennial budget cycles.

The analysis of budget cycles is not as straightforward as one might expect. Biennial budgets do not necessarily mean that appropriations are made for a two-year period. The 1982-83 Book of the States (Attachment D) shows that 17 of the 21 states on a biennial budget cycle make separate appropriations for each year of the biennium (see footnote a of Attachment D). In addition, extensive annual budget review and revision can make biennial budgeting virtually indistinguishable from annual budgeting.

Representative Bettisworth
November 25, 1983
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Another factor complicating the analysis is that one cannot simply look at the constitution or statutes of the states to determine what actually occurs. For example, the Minnesota constitution specifies biennial legislative sessions and a biennial budget cycle. In practice, the Minnesota legislature meets annually and only a few appropriations are made for the biennium. In Vermont, an annual or biennial budget cycle is at the discretion of the governor. These complicating factors and the resultant difficulty in classifying certain states accounts for the inconsistent presentation of data in Attachments A, B and D.

I have attached applicable statutes from Florida, Montana, North Dakota and Oregon. According to the Book of the States, these are the four states with a biennial budget cycle that do not make separate appropriations for each year of the biennium.¹ The statutes specify information required by the legis'ature. Sections 291.322-336 of the Oregon statutes discuss that state's method of amending the budget during the biennium.

* * *

I hope you find this information useful and informative. If you would like additional information on a particular state or particular system of budgeting, please contact the agency.

BT

Attachments A) Biennial and Annual Budgeting (NCSL)
 B) Results of PAR survey on Annual vs. Biennial State
 C) Annual or Biennial Budgets? (CSG)
 D) 1982-83 Book of the States (pages 276-279)
 E) State Statutes
 Florida: Chapter 216, 1982 Supplement
 Montana: Chapter 666, 1983 Session Laws
 North Dakota: Chapter 54-44
 Oregon: Chapter 291.208-385

¹Texas is classified by the NCSL (in Attachment A) as making appropriations for the biennium. Texas statutes on the budget process are lengthy and are not attached to this memorandum.

ATTACHMENT A

BIENNIAL AND ANNUAL BUDGETING

Prepared by Fiscal Affairs Program
NATIONAL CONFERENCE OF STATE LEGISLATURES
1125 17TH Street Suite 1500 Denver, CO 80202
303/292-6600

Since 1969, ten states have changed their budgeting cycle. Hawaii, Vermont and, most recently, Florida, have all changed from annual to biennial budgets. In that same time, Connecticut, Idaho, Illinois, Missouri and Nebraska have all gone from biennial to annual budgets. Indiana experimented with annual operating budgets in fiscal years 1975-76 and 1976-77, but operated with a biennial capital and highway budget. It returned to full biennial budgeting in 1977.

Currently, 29 states have annual budgets and, of course, annual legislative sessions. Another nine states have biennial budgets with biennial sessions, and thus lack any opportunity for annual changes or revisions. (The exception is Oregon, whose joint Ways and Means committees meet during the interim as the Emergency Board, a constitutional board with authority over supplemental appropriations, federal funds, and transfers.) The remaining twelve states have biennial budgets, but meet annually. This last group has some review of the budget annually, but it varies from full reviews to occasional amendments. Only North Carolina, North Dakota, Oregon, Texas, Washington and Wyoming actually make appropriations for the full biennium rather than by fiscal year, and North Carolina, Washington and Wyoming review the budget for possible changes annually.

ANNUAL LEGISLATIVE SESSIONS AND ANNUAL BUDGETS

Alabama	Delaware	Maryland	New Jersey	South Carolina
Alaska	Georgia	Massachusetts	New Mexico	South Dakota
Arizona	Idaho	Michigan	New York	Tennessee ¹
California	Illinois	Mississippi	Oklahoma	Utah
Colorado	Kansas	Missouri	Pennsylvania	West Virginia
Connecticut	Louisiana	Nebraska	Rhode Island	

BIENNIAL LEGISLATIVE SESSIONS AND BIENNIAL BUDGETS

Arkansas	Nevada	North Dakota ³
Kentucky	New Hampshire	Oregon ³
Montana	North Carolina ²	Texas ³

ANNUAL LEGISLATIVE SESSIONS AND BIENNIAL BUDGETS

Florida	Maine	Virginia
Hawaii	Minnesota ¹	Washington ²
Indiana	Ohio	Wisconsin
Iowa	Vermont ¹	Wyoming ²

All state fiscal years begin on July 1 except for Alabama (October 1), Michigan (October 1), New York (April 1) and Texas (September 1).

Footnotes

¹Technically a biennial session, but in practice meets annually.

²Appropriations are made for the biennium, but reviewed annually.

³Appropriations are made for the biennium.

NOTE: Unless otherwise noted, biennial budget states make appropriations for each

ATTACHMENT B

PUBLIC AFFAIRS RESEARCH COUNCIL OF LOUISIANA, INC.



300 Louisiana Avenue • P O Box 3118 • Baton Rouge, Louisiana 70821 • Phone (504) 343-9204

April 22, 1982

MEMO TO: Respondents of PAR Survey
FROM: Brian Davie, Research Analyst
RE: Results of PAR Survey on Annual vs. Biennial State Budgeting

Research Council of Louisiana, Inc. (PAR) is a nonpartisan, nonprofit organization which conducts research on state and local government issues in Louisiana. PAR surveyed all states (excluding Louisiana) in early 1982 to obtain the most current information available on the experience and views concerning the issue of annual vs. biennial state budgets. This paper is a tabulation of the results of that survey.

Louisiana Policy

Louisiana's state government has annual legislative sessions (limited to 60 legislative days during an 85 calendar day period) and an annual budget. New or increased tax levies are not permitted during regular legislative sessions in odd-numbered years. The state has not changed its annual budget cycle and is not considering a change at this time.

Response Rate from Other 49 States

PAR sent the enclosed questionnaire to state budget officers and legislative chairmen of the budget committees in each house. One followup letter was sent and at least one response was received from all 49 states. The maximum number of responses (3) was received from 23 states (47%), two responses were received from 18 states (37%), and one response was received from 8 states (16%). Budget officers or their representatives responded from 45 states (92%) and legislative chairmen responded from 44 states (90%). The overall response rate was 77%. Following are results of the survey.

Budget Cycles

Table 1 shows the number of states which use the types of legislative sessions and budgets indicated.

TABLE 1. State Legislative Sessions and Budget Cycles³

<u>Type Legislative Session</u>	<u>Budget Cycle</u>	<u>Number of States</u>
Annual, unlimited	Annual	25 ^b
Annual, unlimited	Biennial	3
Annual, unlimited	Biennial but amended annually	5
Annual, with fiscal session in off-year	Annual	5
Annual, with fiscal session in off-year	Biennial but amended annually	4
Biennial	Biennial	8

³Includes Louisiana.

^bOne state has annual sessions and budgets by current practice, although the constitution specifies biennial sessions.

Recent Changes

Most states (36) have not changed their budget cycle since 1970. Of the 13 states that changed, eight went from a biennial to an annual budget cycle while two changed from annual to biennial budgets. The remaining three states changed twice -- two states experimented with annual budgets and reverted back to biennial while one state did the opposite.

Only four states reported they are considering seriously a change between annual and biennial budgets. Three of those states now have annual budgets (two changed recently) and the other state has a biennial budget. A budget officer or legislative chairman in 14 states mentioned some change is being considered but those responses were evenly divided between states with annual or biennial budgets.

Time to Plan & Evaluate

Most respondents from both annual and biennial budget states indicated satisfaction with the time available for planning and evaluating state programs, but many added comments to qualify or explain their response. Among respondents from annual budget states, 80% thought an annual cycle allowed adequate time. From the biennial budget states, 98% of the respondents thought the cycle allowed adequate time. Every state with a biennial budget has some procedure for changing budgeted amounts during the biennium; the methods vary from limited authority of the governor or a special interim committee to annual review and/or special sessions of the legislature.

States That Have Changed

The remaining survey questions concerned only the 13 states that changed their budget cycles since 1970; results were inconclusive. For the states that changed twice since 1970, the primary reason appeared to be political -- depending on which party controlled the legislature or which cycle the governor strongly advocated and enforced.

PAR classified responses on effects of the change (Question #8) according to whether the comments were positive, negative or indicated no difference. Respondents from the eight states that changed to annual budgets were almost equally divided between the positive and negative effects of the change and several stated there was no difference. The positive effects most often cited for changing to annual budgets were increased evaluation, legislative scrutiny and more accurate revenue estimates; however, an almost equal number of respondents cited the same factors as having a negative effect, mainly because of the compressed time schedule for reviewing an annual budget.

Respondents from the two states that changed to biennial budgets cited no negative effects, but two of the six respondents in those states said there was no difference. The positive effects mentioned included opportunities for increased planning, evaluation and legislative scrutiny.

It is difficult, if not impossible, to determine what effect a change in budget cycles has on increased state spending (Question #9) since so many other factors intervene such as inflation and major policy changes in state programs. Most respondents acknowledged this and qualified their response. The change had no effect on the rate of increased state spending according to 55% of the respondents. The remaining responses were equally divided between those who thought the change did increase state spending and those who did not know.

Similarly, respondents were almost evenly divided about whether the change affected the accuracy of revenue estimates and accumulation of surplus funds (Question #10).

Which Type Favored by Respondents?

The final survey question provided an opportunity for respondents to comment in general on the issue of annual vs. biennial budgets. Table 2 shows the results of classifying the comments according to which type budget the respondent appeared to favor; again responses were almost equally divided.

TABLE 2. Preferences of Respondents

<u>Preference</u>	<u>Budget Officers</u>	<u>Legislative Leaders</u>	<u>Total</u>
Favor annual budget	5	5	10
Favor biennial budget	6	5	11
Neutral	2	7	9

Conclusion

The Council of State Governments published a detailed state survey analysis on the issue of annual vs. biennial budgets in 1972. PAR's questionnaire was an attempt to update that survey, but it appears little has changed. While more states changed to annual budgeting during the 1970s than in the 1960s, the arguments used to justify and refute both annual and biennial budgets remain essentially unchanged — and unproven. The inconclusive and generally split results on controversial survey questions indicate that both budgeting methods and modifications of them may work effectively in different situations. The success of a budget cycle seems to depend on the commitment of state officials to good implementation rather than the method itself.

Thank you for your interest and participation in PAR's questionnaire. If you would like any further information on the results, please do not hesitate to call or write.

ATTACHMENT C

Annual

Or

Biennial

Budgets ?

The Council of State Governments

ANNUAL OR BIENNIAL BUDGETS?

August 1972
RM-491
Price: \$2.00

The Council of State Governments
Iron Works Pike
Lexington, Kentucky 40505

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FOREWORD

Recent changes in budget procedures in some States have brought renewed attention to the question of whether the process should be an annual or biennial one. The Research Committee of the National Association of State Budget Officers, therefore requested the Council of State Governments to ascertain the reaction of state officials to these changes.

The survey was conducted by means of a questionnaire to ten key executive and legislative officials in each of eleven States. The Council is most grateful to the responding officials for their cooperation and assistance. The report was prepared by Paul Hibberd, Research Associate, under the direction of George A. Bell, Director of Research.

Brevard Carihfield
Executive Director
The Council of State
Governments
Iron Works Pike
Lexington, Kentucky 40505

Introduction

The increasing complexity and mounting problems of state government have triggered many changes in state operations, among these being the shift of legislative sessions to an annual basis rather than biennial. There are now (1972) 33 annual session states plus 3 more whose unlimited biennial sessions extend into the second year, compared with 18 States ten years ago, 10 States twenty years ago, and only 4 States in the early 1940's.

One reason advanced in support of annual sessions has been that state financial and budgetary policies must be reviewed more often than once every two years. This was a predominant factor leading toward annual sessions, as shown by the fact that 9 of the 13 States having annual sessions in 1962 restricted one session every two years primarily to fiscal matters. However, there has been a reversal in this trend, and now a much lower proportion of States - 5 of 33 annual session States, place such limits on sessions.

The felt need for making fiscal decisions annually is still strongly apparent, since most States which have adopted annual sessions have also shifted to annual budgets. However, a few States with annual sessions have not shifted to annual budgets. A further surprising development in view of the trend was the action of Hawaii, which in 1971 shifted to a biennial budget while retaining annual sessions, after having had annual budgets throughout its statehood.

The Hawaii move is one event that has triggered interest among state officials everywhere concerning the advantages and disadvantages of annual versus biennial budgeting, leading to this survey of States which have

made recent shifts. The following questions were asked:

1. What effect has changing from a biennial to an annual budget in your State had on the following:
 - (a) Workload of the budget agency:
 1. Has there been a change in the duties or type of work performed by budget staff?
 2. Has there been a commensurate change in size of budget staff?
 - (b) Workload of other executive agencies (operating agencies; Governor's Office, etc.)
 - (c) Workload of the legislative staff:
 1. Has there been a change in the duties or type of work performed by legislative staff?
 2. Has there been a commensurate change in size of legislative staff?
 - (d) Ability or willingness to undertake planning beyond the budget period:
 - (e) Accuracy of revenue estimates:
 - (f) Ability to meet matching requirements for federal grants in aid:
 - (g) Ability to fully finance programs to carry out the program level the appropriation was designed to meet?
 - (h) On the rate of annual increase in state expenditures
2. When you were on a biennial budget, what procedures (such as use of transfers, emergency appropriation, allotment adjustments, etc.) existed for taking care of changing financial requirements for programs or agencies?
3. What are you able to do under annual budgeting in providing for year to year changes that you could not do under biennial budgets?
4. If the opportunity arose to switch back to biennial budgets, would you favor doing so? Please state reasons.
5. If the switch to biennial budgeting were to be made, what recommendations would you make to assure that legislative and executive controls over program plans and expenditure are not weakened?

The survey covers most States which have recently switched from biennial to annual budgets and have had at least one full biennium under the annual budget system - Florida, Idaho, Illinois, Missouri, Oklahoma, Tennessee, Utah and Vermont. Other States moving to annual budgets such as Connecticut, Nebraska ~~and~~ had not experienced the annual cycle at the time the questionnaire was mailed (fall, 1971.)

Iowa and Georgia have instituted annual legislative sessions while retaining a type of biennial budget and were also surveyed. Indiana's similar shift has occurred too recently for coverage. Hawaii was surveyed

for its shift from annual to biennial budgets. Wisconsin was subsequently added; that State now has annual sessions, and in 1972 completed its first formal off-year budget review process in lieu of an annual budget.

In each of the eight States surveyed which switched from a biennial to an annual budget (above), a questionnaire was sent to ten officials - the Governor, President of the Senate, Speaker of the House, administration/finance officials, budget officers, legislative research directors, legislative fiscal review officers, planning officials, and the chairmen of the appropriations committees. There was, therefore, a possibility for 80 responses. The number of actual responses received was 35, with at least two from each State: two from Tennessee, two from Utah, five from Illinois, six from Idaho, three from Florida, five from Missouri, six from Vermont, and six from Oklahoma. In terms of responding officials the breakdown of answers was: Governors, one; Presidents of Senates, four; Speakers of Houses, four; legislative fiscal review officials, four; chairmen of appropriations committees, six; planning officials, six; administration/finance officials, one; budget officers, six; legislative research directors, three. For purposes of narrating the reported opinions the sole responding administration/finance official was included among the budget officers, and the responses of the Presidents of the Senate and the Speakers of the House were combined and treated as the opinions of legislative leaders.

The questionnaire was also sent to the identical officials in Georgia and Iowa, which changed to annual legislative sessions while retaining biennial budget approaches. These officials were requested to provide their opinions on advantages and disadvantages of not switching to an annual budget cycle.

Finally, the questionnaire was also sent to the same officials in Hawaii, which switched from annual to biennial budgeting. These officials were requested to provide their comments and opinions on the effects of the reverse change from an annual to a biennial cycle. Limiting the usefulness of the original Hawaii responses, according to several officials of the State, was the fact that a full biennium had not yet passed under the new procedure. A followup request to the Hawaiian respondents was sent in June, 1972 to seek further reactions after experience with the new approach during the 1972 session.

In view of the delay in analyzing the responses, the questionnaire was also sent to Wisconsin officials in June, 1972 to ascertain reactions to the budget review process first used in the 1972 session.

Opinions in States Recently Switching to Annual Budgets

The responses of officials in the States which have recently changed from biennial to annual budgets are analyzed in this section. The responses are organized in accordance with the questions asked.

Effect on Workload and Size of the Budget Staff

Budget officers should be in the best position to know whether there has been a change in staff size. According to the seven budget officials who responded, the budget staff was increased in size in three States and remained the same in four. The perception of other officials did not always fit these facts, for in four of the seven States one or more other officials thought the staff had increased when the budget official said it had not (two States) or thought it has not increased when the budget

chief said it had (two States). (See table 1 for summary tabulation).

1. Effect on the size of the Budget Agency:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	1		6		1	3
Legislative Fiscal Review	1		3			4
Chairmen Appropriations Committees	3		2		1	6
Planners	1		1	4		6
Budget Department	3		4			7
Legislative Research	2			1		3
	11		17	5	2	35

In at least one State reporting an increase in staff size, this change was due only in part to annual sessions. Annual sessions were begun at the same time that a major change in budget procedures occurred, including establishment of an analytical staff in the Governor's office and development of program analysis procedures.

With the above indications of a different opinion concerning a factual situation, a difference of opinion is to be expected on the less factual questions which follow.

Legislative leaders expressed doubt whether the workload of the budget agency had increased significantly and whether additional staff was necessary. However, chairmen of the various appropriations committees believed that there was a significant increase in the duties of the budget agency, but not to the point that staff members need be added. One suggestion was that the "off-year" was often not very productive and that the solution to the increased workload was a more concentrated effort each

year. In addition to the above positions, several legislative officials contended that there were insufficient funds to employ additional budget staff members.

Although several executive officials expressed the opinion that there was no change in the duties of the budget agencies, a few budget administrators expounded the adverse effects of the change. Their primary contention was that the switch to an annual budget had left little time to perform various studies for the improvement of organization and operations. For example, one budget director remarked, "the increased workload in terms of budget preparation has left less time to explore substantive issues, and has necessitated restrictions on all other activities." When commenting upon the increased workload of his agency and the inability to add new staff members, another budget official remarked, "instead of additions to staff, such activities as analysis, studies, management services, etc., have been drastically reduced if not altogether eliminated."

2. Effect on the workload of the Budget Agency:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		2	1		4
Chairmen Appropriations Committees	4		1		1	6
Planners	1		1	4		6
Budget Department	4		3			7
Legislative Research	3					3
	16		12	5	2	35

Effect on the Workload of other Executive Agencies

An overwhelming majority of officials responding were of the opinion that the change to an annual budget significantly increased the workload of other executive agencies. In a few instances it was noted that budget operations in all the executive agencies were operating throughout most of the year. One budget official reported that with demands on the individual agencies for program information that was not previously requested, "budgeting has become a full time activity and the days when part time budgeting was possible are gone."

Recognition of this increased workload was not limited to executive officials. Three out of every four legislative officials reported an increased burden on the executive agencies in submitting a budget for their programs annually. One legislative council director remarked that, "probably the most significant aspect of the change (to an annual budget) is an awareness that budgeting is a continuous process the year round, and not just something that takes place at session time."

3. Effect on the workload of other Executive Agencies:

	Increase	No Decrease Change	No Opinion	No Answer	Total
Governor		1			1
President Senate/Speaker House	5	2		1	8
Legislative Fiscal Review	2	1	1		4
Chairmen Appropriations Committees	5	1			6
Planners	1	2	3		6
Budget Department	6	1			7
Legislative Research	3				3
	22	8	4	1	35

Effect on the Workload and Size of the Legislative Staff

The majority of legislative officials felt that the change to an annual budget had no significant effect upon the size or workload of legislative budget staffs already in operation. In two States the statement of the legislative fiscal staff director, who should know, concerning increase in staff was not unanimously supported in the opinions of others. In some States the legislative budget staffs were virtually non-existent under a biennial budget. For example, Vermont had no legislative budget staff until 1970, when an analyst was hired to serve the appropriations committees. Other States in which legislative budget analysis agencies were created at the time of the change to an annual budget cycle attributed those creations directly to other sources, naming the budget change as only an indirect cause.

Most executive officials asserted that they were in no position to express an opinion on the effect of the change to an annual budget upon legislative staffs. Among those who did express an opinion, two out of every three felt that the change had no significant effect upon the size or workload of the staffs.

4. Effect on the Size of the Legislative Staff:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		3			4
Chairmen Appropriations Committees	2		3	1		6
Planners			6			6
Budget Department	2		3	2		7
Legislative Research	2		1			3
	10		21	3	1	35

Effect on Ability or Willingness to Undertake Planning Beyond the Budget Period

The opinions expressed on this issue were widely varied among both legislative and executive officials. Two out of every three budget officials took the position that an annual budget cycle had an adverse effect upon the willingness to undertake planning beyond the budget period. Other respondents noted that agencies and departments were reluctant to engage in advance planning to begin with, but that the switch to an annual budget left less incentive to plan beyond the budget period. Some legislative leaders said that legislative desire for long range planning was not shared by executive agencies. One executive official, explaining the slowness of agencies to plan ahead, noted that program planning is an activity "which must be fostered by the Chief Executive as a basic management tool for a reasonable length of time before agencies are even interested in performing the activity."

5. Effect on the workload of the Legislative Staff:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor			1			1
President Senate/Speaker House	3		4		1	8
Legislative Fiscal Review	1		3			4
Chairman Appropriations Committees	3		2	1		6
Planners				6		6
Budget Department	2		3	2		7
Legislative Research	1		2			3
	10		15	9	1	35

A few officials expressed the opinion that longer range planning was one advantage of annual budgeting, but failed to explain the reasoning behind this statement. Some other officials noted that longer range planning was being instituted under planning programming budgeting systems (PPBS) independently of the effect of annual versus biennial cycles.

Also, in two States the answers revealed differences of opinion among officials. For instance, in one State the Speaker, the legislative fiscal officer and the planning official felt that there was an increase in willingness to undertake planning beyond the budget period, while the budget officer thought there was a decrease in that willingness and both the President of the Senate and a committee chairman reported no change, attributing any difference to a recent emphasis on program planning.

6. Effect on the ability or willingness to undertake planning beyond the budget period:

	Increase	Decrease	Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	2	1	3	1	1	8
Legislative Fiscal Review	2		2			4
Chairmen Appropriations Committees	2	1	3			6
Planners	2		1	3		6
Budget Department	3	4				7
Legislative Research	1		1	1		3
	12	7	10	5	1	35

Effect on Accuracy of Revenue Estimates

A majority of the officials felt that a change to an annual budget cycle should, or did, increase the accuracy of revenue estimates. This opinion was held by 16 reporting officials, compared to 4 who thought that accuracy decreased and 10 who felt that there was no change.

accuracy was presumed to increase because of increased frequency of compiling estimates, and the shorter time interval between making the estimate and realizing the revenue.

7. Effect on the accuracy of Revenue Estimates:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	1	1	2			4
Chairmen Appropriations Committees	6					6
Planners			3	3		6
Budget Department	3	1	2	1		7
Legislative Research	1		2			3
	16	4	10	4	1	35

Effect on Ability to meet Matching Requirements for Federal Grants in Aid

A majority of the state officials took the position that the change to an annual budget increased the ability to meet matching requirements for federal grants in aid. The chief reason for this opinion was the time factor, especially when the federal government is often tardy in appropriating and allocating grants. An annual budget is thought to allow considerably more flexibility if the federal government should significantly alter the amount of money available. One budget director noted that the construction of an annual budget helps avoid the possibility of a special session of the legislature which, when called for fiscal matters, often generates "political stress."

8. Effect on the ability to meet matching requirements for federal grants in aid:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor		1				1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	4					4
Chairmen Appropriations Committees	3		3			6
Planners			3	3		6
Budget Department	5	1	1			7
Legislative Research	1				2	3
	18	3	8	3	3	35

Effect on Ability to Fully Finance Programs to Carry Out the Program Level the Appropriation was Designed to Meet

The majority opinion was that the ability to fully finance programs had been increased by the change to an annual budget. An annual budget, as stated before, appears to be more accurate in predicting revenues. The increased accuracy of estimates increased the ability to fully finance programs, thereby carrying out the program level the appropriations were designed to meet.

Some officials felt that the ability to fully finance programs was not necessarily related to annual or biennial budgets. Their position, as one budget director noted, was that the ability to fully finance programs "speaks to the quality of program projection and revenue estimating and not necessarily for the period during which these events occur."

Some officials recognized the disadvantage of predicting program finance and revenue two years in advance, as opposed to one, but felt that biennial budgeting had other overriding advantages. They suggested

that any problems encountered in fully financing programs during the second year of the biennium could be mitigated by annual sessions where emergency appropriations, transfers, etc., could be enacted.

9. Effect on the ability to fully finance programs to carry out the program level the appropriation was designed to meet:

	Increase	Decrease	Change	No Opinion	No Answer	Total
Governor	1					1
President Senate/Speaker House	5	1	1		1	8
Legislative Fiscal Review	3		1			4
Chairmen Appropriations Committees	3		2	1		6
Planners	2		1	3		6
Budget Department	4		2	1		7
Legislative Research	1		1	1		3
	19	1	3	6	1	35

Effect on the Rate of Annual Increase in State Expenditures

There is no evident consensus on what effect, if any, the change to an annual budget might have had on the rate of annual increase in expenditures: 16 thought it would result in greater increases than biennial budgets while 12 indicated there would be no change.

One budget director who believed increases would result observed, "biennial budgeting tends to lock the second year in close proximity to the level of the first fiscal year. Annual budgeting permits the entire lobby and pressure effort of the various special increases to come into play." Some indicated that as inflation, program alterations, salary adjustments, etc., are considered annually, the rate of increase must necessarily be greater. One budget director introduced a formula: "the rate of annual increase in state expenditures is inversely proportional to the length of the budgetary period."

Those officials who took the position that the change to an annual budget had no effect on the rate of annual increase in expenditures felt that the rate of increase is dependent upon revenue. They noted that if revenue should increase beyond expectations in the second year of the biennium, alterations in appropriations could be made at that session of the legislature. These increases in appropriations would essentially be equal with any changes that might have been made if there were a new budget in the process of formulation under an annual cycle.

10. Effect on the rate of annual increase in state expenditures:

	Increase	Decrease	No Change	No Opinion	No Answer	Total
Governor	1					1
President Senate/Speaker House	4		3		1	8
Legislative Fiscal Review	3		1			4
Chairmen Appropriations Committees	2		3	1		6
Planners			3	3		6
Budget Department	4		2	1		7
Legislative Research	1			2		3
	15		12	7	1	35

Procedures under Biennial Budgets for Fiscal Adjustments

Operations under biennial budgets had not prevented most States from changing their fiscal plans where necessary. In some cases this was done through legislative action in special session or otherwise, such as emergency, deficiency or supplemental appropriations.

An additional method which was often mentioned as a means of combating unforeseen conditions was the transfer of appropriations from one agency, unit or program to another. Five States reported the utilization

of intra-agency transfer, with three of them additionally inter-agency transfers.

Finally, three States noted the existence of an emergency board which had the power to appropriate from a special account in cases when the legislature was not accessible.

A Switch back from Annual to Biennial Budgets?

Among those States which changed to an annual budget, 75 percent of the legislative officials and 70 percent of the executive officials, (but only 50 percent of the budget officers are included in this majority) were satisfied with the new system, while the remainder in each group favored a return to the biennial budget.

Some of the following reasons were cited by legislative officers for remaining with the new system:

- (1) fewer emergency appropriations;
- (2) "annual budgets tend to strengthen the legislator's role in setting the policy of the state."

Two other reasons, cited by some executive officials, are:

- (1) annual budgeting permits the Governor a more frequent review of agency programs and requires state agencies to develop tighter administrative controls over the spending of public funds,
- (2) "in biennial budgeting immediate correction of the State's budget is not possible, and waiting until the legislature meets 'next time' is the only alternative. When corrections are eventually made the legislature in its alarm may accuse the Governor of mismanagement and the Governor in turn accuse the legislature of irresponsibility."

One legislative official who favored returning to a biennial budget system noted that with annual budgeting there was a tendency to focus legislative attention on the details, which should be the concern of the executive.

Among the executive officials who were dissatisfied with the annual budget cycle some of the reasons cited were the following:

- (1) an annual budget system results in a narrow viewpoint, short time spans for accomplishment, and a vast increase in staff work;
- (2) a biennial budget provides more time for program planning activities;
- (3) "with annual budgets, the top talent of the executive branch is tied up preparing, defending and implementing budgets. This creates a continuous and overlapping cycle which requires preparations for next year's budget to start before information on the operation of the current year's budget can be collected and evaluated."

Expenditure Controls under Biennial Budgets

Since a switch to biennial budgeting would allow the various state agencies to operate for two years without their programs being subjected to fiscal change, respondents were asked what measures should be introduced to assure that legislative and executive controls were not weakened.

Among those suggested by legislative officials were these:

- (1) a strong post-audit division for the evaluation of programs,
- (2) the existence of an interim committee or emergency board to act upon requests to cover deficiencies or emergencies.

Executive officials, especially budget officials, made other suggestions for assuring control, including the following:

- (1) legislative willingness to attend special sessions if a significant imbalance in the budget should arise,
- (2) a requirement that each fiscal year in the biennium should stand alone, and no appropriations be carried forward from one year to the next,
- (3) "greater emphasis be placed upon program evaluation and review in terms of definition or objectives, method of operation and intended results,"

- (4) rather than becoming concerned with details, the legislative fiscal staff "should develop information for policy decisions and directions so that the legislators can decide what services the State should render and determine whether the service is worth the dollars that are required....the legislative branch should give the necessary attention to establishing the goals and policies that will set the directions and shape the future of the government."

Annual Session States with Biennial Budgets

Officials from both Iowa and Georgia pointed out that neither State operates on a strict biennial budget. Rather, the systems in those States might be described as 'modified annual' or 'modified biennial' budgets.

The Georgia constitution provides that a General Appropriations Act shall be passed the first year of the legislative term to cover the next two fiscal years. Any excess funds not expended during the first fiscal year shall lapse and revert to the fund from which they were appropriated. In practice, however, the money provided for the second year of the biennium by the appropriations act is merely a 'dummy appropriation' since it duplicates the first year. At the legislative session in the second year of the term amendments are made to the General Appropriations Act to authorize realistic appropriations for the second fiscal year. Since the executive departments are nevertheless required to present their requests on a two-year basis and the Governor must make his recommendations on a two-year basis, the General Assembly has access to the information to make a reasonable prediction of what funds will be necessary in the second fiscal year.

Prior to 1971, Iowa operated on almost a strictly biennial budget. During those years appropriation bills were drawn which authorized an

identical amount for each year of the biennium. Any departmental appropriations which were not expended during the first fiscal year of the biennium could be carried over and expended during the second fiscal year.

In 1971 a new procedure was put into effect through adoption of a law providing that if the appropriated funds of an agency were not expended during the first fiscal year, the balance would 'revert to the state treasury and to the credit of the fund from which appropriated.' If an agency felt that the funds which would normally have reverted to the state treasury were essential to that agency, an application could be made to the appropriations committees for a hearing.

One legislative official expressed the opinion that the most significant factor in preventing Iowa from changing to an annual budget was the added burden of repeating the entire budget process each year. Although several bills had been introduced in the State which would provide for an annual budget, this time factor seems to have been the foremost cause of defeat.

Questionnaire responses from the two States totalled six, but only three were susceptible to tabulation for any one question. Thus, the following discussion is based on limited responses.

Among both Georgia and Iowa officials there were differing opinions whether a change to an annual budget cycle would have any effect on the workload or size of executive budget agencies. One budget officer noted that the only alteration might be less emphasis on analysis work and more on projection. It was suggested that the workload of other executive agencies would increase as budget preparation became a 'full-time' project.

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project.

Additionally, officials from both these States expressed the opinion that the workload of legislative fiscal staffs would be affected by a change to an annual budget. They felt that such a change would require greater detail, greater analysis of budget requests, and overall greater control being exercised by the general assembly. There was a difference of opinion, however, concerning whether the altered workload would necessitate a larger staff.

Regarding the State's willingness to undertake planning beyond the budget period when operating on an annual cycle, Georgia and Iowa respondents indicated that the proclivity to look beyond one year would either be reduced or unaffected. While they felt that annual budgets would lead to more accuracy of revenue estimates, they indicated that inaccuracies resulting from biennial budgets could be remedied in the annual legislative sessions. Georgia and Iowa officials contended that the rate of increase in budgets is more controllable in a biennial cycle. The primary argument in Iowa was that the pressure for increase is reduced during the second session when additional appropriations will be made only in the case of emergencies or unforeseeable changes. One Iowa official summarized as follows: "It seems to us that really we have the 'best of both worlds' 1) less time consumed in preparation/hearings, yet 2) the ability to review and make changes in the second session."

The Switch from Annual to Biennial Budgets - Hawaii

Hawaii abandoned an annual system in favor of a biennial one, effective July 1, 1971. Since this change was so recent, few definite results or effects were available for analysis at the time the questionnaire was sent out. In addition to the change to biennial budgets, Hawaii