ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672
4126 SJUD SJR 9

1006

8845 Gail Ave.
Juneau, Ak. 99821
2-26-86

Senators DeVries, Abood, Faiks, Rodey & Ray
Alaska State Legistlature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senators:

My Wife and I support CS for Senate Joint Resolution #9.

We need the checks and balance that having an elected AG would provide.

We ask you to vote for this bill when it comes to the floor, and to advise any other senators who need to know, of our opinion.

If this bill comes to a vote, we would request our own Senator, Bill Ray, to kindly send us a list of all the senators and how they voted.

Thank you.

Sincerely,

Mr. & Mrs. David Lewis

file

P.O. Box 211248
Auke Bay, Ak. 99821
2-26-86

Senator Patrick Rodev
Alaska State Legistlature
Pouch V (MS 3100)
Juneau, Alaska 99811

Dear Senator Patrick Roday:

My husband and I are asking you to vote for CS for Senate Joint Resolution #9.

We feel it is imperative that the AG become accountable to the people, if Alaska is to be the representative government that our U.S. Constitution promises us we are to live under.

We respectfully request a reply as to how you have voted or intend to vote if this bill comes to the floor this week.

Sincerely,

Mr. & Mrs. C. Dale Miller

Mr. & Mrs. C. Dale Miller

February 15, 1986

Honorable Patrick B. Rodey
Senator State of Alaska
Chairman, Judiciary Com.

Dear ~~Editor;~~ Senator Rodey

PEOPLE CHOSE A.G.

Governor Sheffield's efforts during the last session to get approval from the legislature of his choice for Attorney General cost the people untold thousands in cash as well as unknown time (money) diversion by the legislators from considering productive legislation.

The legislators should receive salaries in excess of the salaries re-ceived by those of the judicial branch, however, their valuable time should not be wasted on things the people can do, such as, selecting an Attorney General and other judicial officers.

A people-selected Attorney General would certainly attach sufficient importance to the job to complete his term and such selection would not distract the legislature from the work only it can do.

The persons seeking voter approval as Attorney General that have no ambition to consider some future higher office or other self improve-ments will probably be rejected by the voters as dead-bats.

Sincerely,

Leonard E. Moffitt
Box 748
Palmer, Alaska 99645
745-3384

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/20/86

REQUEST

Bill/Resolution No.: SJR 9
Title: "...relating to the election of the attorney general."

Sponsor: Sen. DeVries
Requestor: Senate Judiciary Committee
Date of Request: February 19, 1986

FISCAL DETAIL

Agency Affected: Department of Law
BRU: Legal Services, Prosecution, Consumer Protection

Components: Leg. Svcs. Opns., Admin. & Support, Leg. Svcs. D.P., Prosecution - Admin. & Support

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING				*	*	*
CAPITAL						
REVENUE						

FUNDING : (Thousands of Dollars)

GENERAL FUND				*	*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME				*	*	*
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

* Because expenditures would not begin until the latter part of FY 89 1/, actual costs cannot be determined at this time. Please see the attached analysis.

1/ It is not clear from the resolution whether an incumbent or newly appointed attorney general, appointed prior to the first Monday in December, 1988, could assume independent status if a constitutional amendment conferring such status is approved in 1986.

Prepared by: Richard I. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 2/20/86

Approved by Commissioner: Richard I. Pegues /for/ Harold M. Brown, Attorney General — Date: 2/20/86
Agency: Department of Law

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

10/25/85

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SJR 9

his resolution provides for a ballot proposition that would, .. approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting, duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management. In an Executive Branch agency, a temporary clerk may not be hired without inter-departmental approval. Likewise, a single file cabinet may not be purchased, nor may a single telephone line be ordered without such approval.

It will be very expensive for an elected attorney general to provide all or most of these services in-house. Although an attorney general may decide to use some of the centrally provided services, key areas such as: personnel; professional services contracting; purchasing, supply and leasing, data processing; and budget preparation and management, would have to be provided in-house if the attorney general's functions are to be at least reasonably free of the governor's supervision.

Additional costs, expressed in FY 85 dollars, that will provide for complete independence from the organizational and supervisory control of the governor are shown below. Even if the attorney general were to forego a part of this independence, the savings would only amount to 20 or 30% of the total cost because of the necessity to retain in-house control over the essential support services that would determine an independent department's freedom of action.

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 33 at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management

and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month, per employee. New position costs include $1,500 per employee for one-time commodities (furniture and equipment costing less than $500 per item), and $1,200 per employee for new position equipment costing more than $500 per item. Special items include $15,000 for employee recruitment advertising for non-attorney job applicants, $25,000 for personnel system printing. Word processors will cost $14,500 each for a total cost of $72,500. Records management equipment include storage devices and microfilm/graphics equipment totalling $95,000. Duplication equipment will cost approximately $170,000. DP costs will probably total about $150,000 for computing time and storage and about $150,000 for existing systems program maintenance.

The total additional cost of $2,554,937 is an enormous increase over the department's current administrative overhead of $424,600 projected for FY 86. It is, however, part of the price that will probably have to be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1986 general election.

Another major cost area that will eventually occur as a result of changing from an appointed to an elected attorney general, will be the proliferation of special counsel on the staffs of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads and submit amicus briefs in litigation affecting their department's programs. It is not unusual in these states to see four or five separate briefs filed in a single matter, in addition to the attorney general's brief, representing the varying viewpoints of different agencies. Costs for just a single special counsel, including secretarial assistance, total about $150,000 per year in 1985 dollars. Although it is impossible, at this time, to accurately say how extensive the use of in-house counsel will be if there is an elected attorney general, the additional cost for such counsel could easily exceed $1.5 million annually, within just a few years.

Function	Positions	Salary/ Benefits	Other Position Costs		Total
Director's Office					
	(1) Budget Analyst R19	51,365.	Travel	2,500.	
	(1) Admin. Officer R17	44,923.	Contractual	24,100	
	(1) Clk. Typist R8	27,143.	Commod.-ongoing	5,400.	
			Commod.-one-time	4,500.	
			Equ p.-one-time	18,100.	
	(3)	123,431.		54,600.	178,031.
Personnel					
	(1) Personnel Mgr. R21	58,195.	Travel	10,000.	
	(2) Personnel Analysts R16	42,103. X 2	Contractual	54,200.	
	(1) Training Officer R18	48,107.	Commod.-ongoing	14,400.	
	(2) Personnel Tech.'s R12	33,820. X 2	Commod.-one-time	12,000.	
	(1) Payroll Clerk R10	30,284.	Equip.-one-time	24,100.	
	(1) Clk. Typist R8	27,143.			
	(8)	315,575.		114,700.	430,275.
Property/Supply					
	(1) Materials Mgr. R21	58,195.	Travel	7,500.	
	(1) Purchasing Agent R18	48,107.	Contractual	19,600.	
	(1) Supply Officer R16	42,103.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R8	27,143	Commod.-one-time	6,000.	
			Equip.-one-time	19,300.	
	(4)	175,548.		59,600.	235,148.
Finance/Accounting					
	(1) Finance Officer R21	58,195.	Travel	5,000.	
	(1) Acct. Supervisor R16	42,103.	Contractual	33,100.	
	(2) Acct. Clerk R10	30,284. X 2	Commod.-ongoing	9,000.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	7,500.	
			Equip.-one-time	15,700.	
	(5)	188,009.		70,300.	258,309.

Records Management					
	(1) Records Analyst R18	48,107.	Travel	1,800.	
	(1) Records Supervisor R15	39,415.	Contractual	81,200.	
	(1) Records Handler R12	33,820.	Commod.-ongoing	9,000.	
	(2) Microfilm Operators R10/R14		Commod.-one-time	7,500.	
		30,284./37,005.	Equip.-one-time	105,000.	
	(5)	188,631.		204,500.	393,131.
Data Processing/Communications					
	(1) DP Mgr. R23	65,742.	Travel	7,500.	
	(1) Programmer Analyst R17	44,923.	Contractual	319,900.	
	(1) DP/Comm. Sys. Supvr.R18	48,107.	Commod.-ongoing	7,200.	
	(1) Clk. Typist R8	27,143.	Commod.-one-time	6,000.	
			Equip.-one-time	56,100.	
	(4)	185,915.		396,700.	582,615.
Duplication Svcs.					
	(1) Duplication Mgr. R19	51,365.	Travel	1,000.	
	(1) Printing Tech. R17	44,923.	Contractual	74,500.	
	(2) Machine Operators R12	33.820. X 2	Commod.-ongoing	57,200.	
			Commod.-one-time	6,000.	
			Equip.-one-time	174,800.	
	(4)	163,928.		313,500.	477,428.
TOTAL	(33)	1,341,037.		1,213,900.	2,554,937..

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR No. 9

Title: "...relating to the election of the attorney general."

Sponsor: Sen. DeVries

Requestor: Office of the Gov./OMB

Date of Request: April 22, 1985

FISCAL DETAIL

Agency Affected: Department of Law

Program Category Affected: Gen. Govt., Admin. of Justice, Public Protection

BRU, Program or Subprogram(s) Affected: Legal Services, Prosecution, Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING					*	*
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND					*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME					*	*
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TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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1/ It is not clear from the resolution whether an incumbent or newly appointed attorney general, appointed prior to the first Monday in December, 1988, could assume independent status if a constitutional amendment conferring such status is approved in 1986.

Prepared By: Richard I. Pegues, Director Phone: 465-3672

Division: Administrative Services Date: 4/23/85

Approved by Commissioner: Richard I. Pegues Norman C. Gorsuch Date: 4/23/85

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

SJR No. 9 4/23/85
Analysis

This resolution provides for a ballot proposition that would, if approved by the voters, amend the state's constitution by changing the position of attorney general from an appointed office to an elected office. The proposed amendments would also remove the governor's organizational and supervisory controls over any function or unit of government headed by the attorney general.

These controls are normally maintained through executive branch procedural requirements imposed on other executive branch agencies by the Department of Administration and the Office of Management and Budget on behalf of the governor. The controls are exercised by requiring that other departments obtain OMB's and Administration's approval for: purchasing, leasing and supply; professional services contracting; duplicating services; personnel administration and labor relations; equal employment opportunity programs; data processing, information management and telecommunications services; records management; preaudit accounting services; and budget preparation and budget management. In an Executive Branch agency, a temporary clerk may not be hired without inter-departmental approval. Likewise, a single file cabinet may not be purchased, nor may a single telephone line be ordered without such approval.

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			Equip.-one-time	174,800.	
	(4)	163,928.		313,500.	477,428.
TOTAL	(33)	1,341,037.		1,213,900.	2,554,937.

Bradley
2/3/86

Original sponsors: Devries, Abood,
Faiks and Rodey

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 9 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

Proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general.

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

* Section 1. Article III, sec. 23, Constitution of the State of Alaska is amended to read:

SECTION 23. REORGANIZATION. (a) Except as provided in (b) of this section, the [THE] governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

(b) The governor may not make a change in the organization or function of any unit of the executive branch which is headed by the attorney general.

* Sec. 2. Article III, sec. 24, Constitution of the State of Alaska is amended to read:

SECTION 24. SUPERVISION. Except for any unit of the executive branch which is headed by the attorney general, each [EACH] principal department shall be under the supervision of the governor.

* Sec. 3. Article III, sec. 25, Constitution of the State of Alaska is amended to read:

SECTION 25. DEPARTMENT HEADS. The head of each principal department shall be a single executive unless otherwise provided by law. The head of a principal department [HE] shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the lieutenant governor and the attorney general [SECRETARY OF STATE]. The heads of all principal departments shall be citizens of the United States.

* Sec. 4. Article III, Constitution of the State of Alaska is amended by adding new sections to read:

SECTION 28. ATTORNEY GENERAL: QUALIFICATIONS. There shall be an attorney general. The attorney general shall be at least thirty years of age and a qualified voter of the state. The attorney general shall have been a resident of Alaska at least five years immediately preceding the filing for office and shall have been a citizen of the United States for at least seven years. The attorney general shall be licensed to practice law in the state and shall possess additional qualifications prescribed by law.

SECTION 29. ELECTION OF ATTORNEY GENERAL. The attorney general shall be chosen by the qualified voters of the state at a general election. The candidate receiving the greatest number of votes shall be attorney general.

SECTION 30. LIMIT ON TENURE. A person who has been elected attorney general for two full successive terms is not eligible to hold that office until one full term has intervened.

SECTION 31. VACANCY. In case of a vacancy in the office of

attorney general for any reason, a successor shall be elected for the remainder of the unexpired term at the first general election occurring not less than six months after the office becomes vacant. The governor may appoint a qualified person to fill the office between the date it becomes vacant and the date it is filled by election.

SECTION 32. COMPENSATION. The compensation of the attorney general shall be prescribed by law and shall not be diminished during the term of office, unless by general law applying to all salaried officers of the state.

SECTION 33. DUTIES. The attorney general shall be the legal adviser of state officers, shall represent the state in all civil actions in which the state is a party, shall prosecute all violations of state law, and shall perform other duties prescribed by law.

SECTION 34. ELECTION AND TERM OF ATTORNEY GENERAL. The first election for an attorney general required by the constitution to be elected shall occur at the first general election occurring after the office is established under the constitution. If a vacancy occurs in the office of attorney general before the first general election held after the office is established under the constitution, the office shall be filled under the law as it existed before the office was established under the constitution. Except as otherwise provided in the constitution, the term of office of attorney general required by the constitution to be elected begins at noon on the first Monday in December following the general election for that office and it expires at noon on the first Monday in December four years later.

* Sec. 5. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Table 19
STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION

State or other jurisdiction	Governor	Lt. governor	Secretary of state	Attorney general	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget	Civil rights	Commerce	Community affairs	Comptroller	Consumer affairs	Corrections	Data processing
Alabama	CE	CE	CE	CE	CE	G	...	CE	G	CS	...	G	G	AG	(a-1)	G	CS
Alaska	CE	CE	(a-4)	GB	(a-5)	GB	A	A	A	A	G	GB	GB	GB	A	A	A
Arizona	CE	...	CE	CE	CE	G	GS	B	GS	L	A	G	...	AG	(a-1)	GS	AG
Arkansas	CE	CE	CE	CE	CE	G	(a-10)	(a-11)	AG	AG	...	(a-12)	G	(a-10)	(a-1)	GS	GS
California	CE	CE	CE	CE	CE	GS	(b)	GS	GS	GS	G	GS	GS	CE	GS	GS	G
Colorado	CE	CE	CE	CE	CE	G	GS	GS	A	GS	A	A	A	A	(a-1)	GS	(a-8)
Connecticut	CE	CE	CE	CE	CE	G	GE	GE	GE	A	B	GE	A	CE	GE	GE	A
Delaware	CE	CE	GS	CE	CE	GS	GS	GS	GS	GS	GS	AG	AG	A	AG	GS	AG
Florida	CE	CE	CE	CE	CE	GS	GS	CE	CE	A	A	GS	GS	CE	A	GS	A
Georgia	CE	CE	CE	CE	A	G	GS	CE	GS	GC	...	B	G	CE	G	B	A
Hawaii	CE	CE	(a-4)	GS	...	GS	...	GS	(a-25)	GS	...	(a-7)	...	GS	(a-25)	(a-3)	(a-22)
Idaho	CE	CE	CE	CE	CE	G	GS	GS	GS	G	BGS	G	(a-11)	CE	(a-1)	BGS	(a-5)
Illinois	CE	CE	CE	CE	CE	G	GS	GS	GS	G	GS	GS	GS	CE	(a-1)	GS	A
Indiana	CE	CE	CE	SE	CE	G	G	(a-4)	G	G	G	(a-4)	A	...	AT	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	(a-5)	GS	GS	A	GS	(a-1)	(a-3)	CS
Kansas	CE	CE	CE	CE	SE	GS	GS	B	GS	CS	B	GS	A	A	A	GS	A
Kentucky	CE	CE	CE	CE	CE	G	G	CE	G	AG	B	G	G	(a-10)	A	AG	AG
Louisiana	CE	CE	CE	CE	CE	GS	G	CE	GS	GS	...	GS	GS	(a-8)	GS	GS	A
Maine	CE	...	CL	CL	CL	G	GLS	GLS	GLS	AG	B	(a-27)	G	AG	GLS	AG	CS
Maryland	CE	CE	GS	CE	CL	GS	...	GS	AGS	GS	GS	A	AG	CE	A	AGS	(a-5)
Massachusetts	CE	CE	CE	CE	CE	G	G	G	G	AG	AT	G	G	G	G	G	A
Michigan	CE	CE	CE	CE	GS	GS	GS	B	GS	(a-8)	B	GS	...	...	(a-1)	B	(a-8)
Minnesota	CE	CE	CE	CE	CE	G	GS	GS	BS	GS	GS	(g)	(a-11)	A	GS	GS	A
Mississippi	CE	CE	CE	CE	CE	GS	...	SE	GS	B	...	(a-29)	B	(a-30)	A	B	B
Missouri	CE	CE	CE	CE	CE	GS	GS	GS	AS	A	B	A	(a-11)	A	GS	GS	A
Montana	CE	CE	CE	CE	A	G	GS	GS	(a-11)	G	G	G	(a-11)	A	G	A	A
Nebraska	CE	CE	CE	CE	CE	G	GS	GS	GS	A	B	GS	(a-11)	A	(a-1)	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	BG	A	(a-8)	G	G	G	CE	A	G	A
New Hampshire	CE	...	CL	GC	CL	GC	(a-5)	GC	GC	A	B	GOC	GOC	GOC	(a-1)	GOC	B
New Jersey	CE	...	GS	GS	CS	GS	...	BG	GS	GS	A	GS	GS	GS	GS	GS	A
New Mexico	CE	CE	CE	CE	CE	GS	GS	(b)	GS	G	G	GS	AG	G	(a-1)	A	A
New York	CE	CE	GS	CE	A	G	...	GS	G	G	G	GS	GS	CE	GS	GS	(a-6)
North Carolina	CE	CE	CE	CE	CE	G	G	CE	GS	AG	(a-8)	G	A	(a-22)	A	G	AG
North Dakota	CE	CE	CE	CE	CE	G	A	CE	GS	A	...	G	...	A	A	GS	A
Ohio	CE	CE	CE	CE	CE	G	GS	GS	A	GS	GS	GS	(a-11)	(a-21)	(a-1)	GS	A
Oklahoma	CE	CE	GS	CE	CE	GS	...	GS	GS	G	B	G	G	AG	B	B	...
Oregon	CE	...	CE	SE	CE	G	GS	GS	AG	A	CS	GS	A	A	A	AG	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G	GS	GS	GS	AG	A	AG	AG
Rhode Island	CE	CE	CE	CE	CE	G	GS	(a-12)	G	CS	B	GS	GS	A	BS	GS	A
South Carolina	CE	CE	CE	CE	CE	CE	(a-22)	SE	B	B	B	(a-27)	A	CE	B	B	(a-22)
South Dakota	CE	CE	CE	CE	CE	GS	G	GS	A	G	GS	GS	(a-27)	CE	(a-1)	AG	A
Tennessee	CE	(i)	CL	SC	CL	G	(a-10)	G	G	A	B	G	(a-11)	CL	A	G	A
Texas	CE	CE	GS	CE	CE	GS	...	SE	BS	G	...	(a-27)	GS	CE	A	B	B
Utah	CE	CE	...	CE	CE	G	GS	GS	GS	G	...	GS	GS	CE	AG	BA	AG
Vermont	CE	CE	CE	SE	CE	SL	GS	GS	GS	GS	(a-1)	A	GS	(a-10)	(a-1)	GS	CS
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB	...	GB	A	GB	(a-29)	GB	GB
Washington	CE	CE	CE	CE	CE	GS	(a-6)	GS	A	GS	B	GS	(a-11)	(a-22)	(a-1)	GS	B
West Virginia	CE	...	CE	CE	CE	GS	(a-10)	CE	GS	A	GS	GS	A	(a-10)	(a-1)	GS	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	B	GS	(a-8)	A	GS	(a-11)	(a-8)	(a-1)	A	(a-8)
Wyoming	CE	...	CE	GS	CE	G	G	B	G	G	...	(a-27)	(a-27)	G	(a-1)	BG	A
Guam	CE	CE	...	GS	A	...	GS	GS	(a-38)	GS	...	GS	G	(a-8)	A	GS	A
Puerto Rico	CE	...	GB	GS	GS	GS	...	GS	(a-21)	G	G	G	A	G	GS	GS	...
Virgin Islands	CE	CE	...	GS	...	...	(b)	GS	(a-4)	G	GS	GS	(b)	...	GS	GS	(b)

Note: Salary figures for these officials may be found in Table 18.

Key:

CE —Constitutional, elected
CL —Constitutional, elected by legislature
SE —Statutory, elected
SL —Statutory, elected by legislature
L —Selected by legislature or one of its organs
SC —Statutory, elected by state supreme court

Appointed by:	*Approved by:*
G —Governor	...
GS —Governor	Senate
GB —Governor	Both houses
GE —Governor	Either house
GC —Governor	Council
GD —Governor	Departmental board
GLS —Governor	Appropriate legislative committee & senate
GLG —Governor & Lt. governor	...
GOC —Governor & council or cabinet	...
LG —Lieutenant governor	...

Appointed by:	*Approved by:*
AT —Attorney general	...
A —Agency head	...
AB —Agency head	Board
AG —Agency head	Governor
AGC —Agency head	Governor & council
AS —Agency head	Senate
ALS —Agency head	Appropriate legislative committee & senate
AGS —Agency head	Governor & senate
ASH —Agency head	Senate president & house speaker
B —Board or commission	...
BG —Board	Governor
BGC —Board	Governor & council
BGS —Board	Governor & senate
BS —Board or commission	Senate
BA —Board or commission	Agency head
CS —Civil Service	...
ACB —Nominated by audit committee	Both houses

Table 6

ATTORNEYS GENERAL AND SECRETARIES OF STATE: QUALIFICATIONS FOR OFFICE

State or other jurisdiction	Attorneys General: Minimum age	U.S. citizen (years)	State resident (years)	Qualified voter	Licensed attorney (years)	Membership in the state bar (years)	Secretaries of State: Minimum age	U.S. citizen (years)	State resident (years)	Qualified voter
Alabama	25	7	5	...	...	...	25	7	5	*
Alaska	...	*	...	...	...	...	(a)	(a)	(a)	(a)
Arizona	25	10	5	...	...	...	25	10	5	*
Arkansas	...	*	*	*(b)	...	...	...	...	*	*(b)
California	18	...	*	...	*(c)	*(c)	...	...	...	*(b)
Colorado	25	*	2	...	*	...	25	*	2	*
Connecticut	21	*	6 mos.	*	10	10	21	*	*	*
Delaware	...	...	...	...	...	...	...	...	...	...
Florida	30	*	7	*	5	5	30	*	7	*
Georgia	25	10	6	*	7	6	25	10	6	...
Hawaii	...	*	1	...	...	...	(a)	(a)	(a)	(a)
Idaho	30	*	2	*	*	*	25	*	2	...
Illinois	25	*	3	...	...	...	25	*	3	...
Indiana	...	*	*	*(b)	*	...	...	...	...	*(b)
Iowa	...	...	...	...	...	...	...	...	*	...
Kansas	...	*	...	...	*	*	...	...	...	*(b)
Kentucky	30	2	2	...	8	2	30	...	2	...
Louisiana	25	5	5	*	5	5	25	5	5	*
Maine	...	...	...	...	...	...	...	...	...	...
Maryland	...	...	10	*(b)	10	10(d)	...	...	...	...
Massachusetts	...	*	5	*	*	*	18	*	5	*
Michigan	18	*	30 days	*	*	*	...	*	30 days	*(b)
Minnesota	21	3 mos.	30 days	*	...	...	21	*	*	*
Mississippi	26	*	5	*	5	5	25	5	5	*
Missouri	...	...	...	...	...	...	...	...	...	...
Montana	25	*	2	...	5	5(d)	25	2	2	...
Nebraska	21(e)	...	*(d)	...	*(d)	...	18	*	*	...
Nevada	25	2	2	*	...	...	18	2	2	*
New Hampshire	...	...	...	...	*	*	...	...	...	...
New Jersey	18(f)	...	*	...	*	*	...	...	...	...
New Mexico	30	*	5	...	*	*	30	*	5	*
New York	30	*	5	...	*(d)	...	...	...	...	...
North Carolina	21	*	30 days	*	...	...	21	*	1	*
North Dakota	25	*	*	*	...	...	25	...	30 days	*
Ohio	18	30 days	30 days	*	...	...	...	...	...	*(b)
Oklahoma	31	*	10	*	...	...	31	*	10	*
Oregon	...	...	...	*(b)	...	...	18	*	*	*
Pennsylvania(g)	30	*	7	*(d)	*(d)	*	...	...	...	...
Rhode Island	18	30 days	30 days	*	...	...	18	30 days	30 days	*
South Carolina	...	...	*	*(b)	...	...	21	*	1	*
South Dakota	...	*	*	*(b)	*	*	...	...	...	...
Tennessee	...	...	...	...	...	...	...	...	...	...
Texas	...	*	...	...	*	*	...	*	*	...
Utah	25	*	5	*	*	*	(a)	(a)	(a)	(a)
Vermont	...	...	...	...	...	...	...	...	...	*(b)
Virginia	...	...	*	*(b)	*	...	...	...	...	...
Washington	...	*	*	*(b)	*	*	...	*	*	*(b)
West Virginia	25	5	5	*	...	...	18	5	5	*
Wisconsin	...	...	...	...	...	...	...	...	...	...
Wyoming	...	...	*	...	4	4	25	*	*	*
American Samoa	...	...	...	...	...	...	(a)	(a)	(a)	(a)
Guam	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	(a)	(a)	(a)	(a)
Northern Mariana Is.	...	...	...	...	5(d)	...	(a)	(a)	(a)	(a)
Puerto Rico	21(e)	...	...	...	*(d)	*(d)	...	...	...	...
Virgin Islands	...	*	...	...	*(h)	...	(a)	(a)	(a)	(a)

N.A.—Not available.

(a) No secretary of state.

(b) Although there may be no specific requirement for minimum age of U.S. citizen, it can be inferred that the individual must be 18 years old and a U.S. citizen since he or she must be a qualified voter. In addition, some states have residency requirements to be a qualified voter and these can be found in the table "Qualifications for Voting."

(c) No statute specifically requires this, but the State Bar Act can be construed as making this a qualification.

(d) Implied.

(e) Implied, since the attorney general must represent the state in all legal matters and, therefore, must be an attorney. To be an attorney in Nebraska and Puerto Rico, one must be at least 21 years old.

(f) Implied, since the attorney general must be a practicing attorney and to be an attorney in New Jersey, one must be at least 18 years old.

(g) These qualifications took effect for the first time with the attorney general entering office in 1981.

(h) Must be admitted to practice before highest court of a state or territory.

Table 9

ATTORNEYS GENERAL: PROSECUTORIAL AND ADVISORY DUTIES

State or other jurisdiction	Authority to initiate local prosecutions	May intervene in local prosecutions	May assist local prosecutor	May supersede local prosecutor	Issues advisory opinions: To state executive officials	Issues advisory opinions: To legislators	Issues advisory opinions: To local prosecutors	Issues advisory opinions: On the interpretation of statutes	Issues advisory opinions: On the constitutionality of bills or ordinances	Reviews legislation: Prior to passage	Reviews legislation: Before signing
Alabama	A	A,D	A,D	A	*	*	*	*	*	*	...
Alaska	A(a)	A(a)	A(a)	A(a)	*	*	...	*	*	*	*
Arizona	A,B,C,D,F	B,D	B,D	B	*	*	*	*	*	*	...
Arkansas	...	D	D	...	*	*	*	*	*	*	*
California	A, E	A,D,E	A,B,D	A	*	*	*	*	*	*	*
Colorado	B,F	B	D,F(b)	B	*	*	*	*	*	*	*
Connecticut	...	...	...	...	*	*	*	*	*	*	*
Delaware	(c)	(c)	(c)	(c)	*	*	*	*	*	*	*
Florida	F	D	D	...	*	*	*	*	*	*	*
Georgia	A,B,F	A,B,D,G	A,B,D,F	B	*	*	*	*	*	*	*
Hawaii	E	A,D,G	A,D	A,G	*	*	*	*	*	*	*
Idaho	A,D,F	A	A,D	A	*	*	*	*	*	*	*
Illinois	A,D,E,F,G	A,D,E	A,D	F	*	*	*	*	*	(d)	(d)
Indiana	F(b)	...	A,D,E,F	G	*	*	*	*	*	*	*
Iowa	D,F	D	D	...	*	*	*	*	*	*	*
Kansas	B,C,D,F	D	D	A,F	*	*	*	*	*	*	*
Kentucky	A,B	B,D	B,D,F	G	*	*	*	*	*	*	...
Louisiana	G	G	D	G	*	*	*	*	*	*	*
Maine	A	A	A	A	*	*	...	*	*	*	*
Maryland	B,C,F	B,C,D	B,C,D	B,C	*	*	*	*	*	*	*
Massachusetts	A,B,C,D,E,F,G	A,B,C,D,E,G	A,B,C,D,E	A,B,C,E	*	*	*	*	*	*	*
Michigan	A	A	D	A	*	*	*	*	*	*	*
Minnesota	B	B,D,G	A,B,D	B	*	*	*	*	*	(d)	(d)
Mississippi	B,E,F	...	B,F	...	*	*	*	*	*	(d)	(d)
Missouri	F	...	B	...	*	*	*	*	*	*	*
Montana	C,F	A,B,C,D	A,B,C,D,F	A,C	*	*(e)	*	*	*	*	...
Nebraska	A	A	A,D	A	*	*	*	*	*	*	...
Nevada	D,F,G(f)	D(f)	(f,g)	G,F	*	*	*	*	*	*	...
New Hampshire	A	A	A	A	*	*	...	*	*	*	*
New Jersey	A	A,B,D,G	A,D	A,B,D,G	*	*	*	*	*	*	*
New Mexico	A,B,E,F,G	B,D,G	D	B	*	*	*	*	*	*	*
New York	B,F,	B	D	B	*	*	*	*	*	*	*
North Carolina	...	D	D	...	*	*	*	*	*	*	...
North Dakota	A,G	A,D	A,D	A	*	*	*	*	*	*	(d)
Ohio	B,C,F	B,F	F	B,C	*	*(e)	*	*	*	*	...
Oklahoma	B,C	B,C	B,C	B,C	*	*	*	*	*	*	*
Oregon	B,F	B,D	B,D	B	*	*	*	*	*	(d)	(d)
Pennsylvania	A,D,G	D,G	D	G	*	...	*	*	*	*	*
Rhode Island	A	D	D	...	*	*	*	*	*	*	...
South Carolina	A	A,D	A,D	A	*	*	*	*	*	*	*
South Dakota	A(h)	A	A	A	*	*	*	*	*	*	*
Tennessee	D,F,G(b)	D,G(b)	D	F	*	*	*	*	*	(d)	(d)
Texas	F	...	D	...	*	*	*	*	*	*	*
Utah	A,B,D,E,F,G	E,G	D,E	E	*	*	*	*	*	(d)	(d)
Vermont	A	A	A	A	*	*	*	*	*	*	*
Virginia	B,F	A,B,D,F	B,D,F	B	*	*	*	*	*	*	*
Washington	B,D,G	B,D,G	D	B	*	*	*	*	*	*	*
West Virginia	...	...	D	...	*	*	*	*	*	(i)	(i)
Wisconsin	B,C,F	B,C,D	D	B,C(j)	*	*	*	*	*	(i)	(i)
Wyoming	B,D(b)	B,D	B,D	...	*	*	*	*	...	*	*
American Samoa	A,E	A,E	A,E	A,E	*	*	...	*	*	*	*
No. Mariana Is.	A	...	...	...	*	*	...	*	*	*	*
Puerto Rico	A,B,E	A,B,E	A,E	A,B,E	*	*	...	*	*	*	*
Virgin Islands	A	...	...	...	*	*	...	*	*	*	*

Key:
A—On own initiative.
B—On request of governor.
C—On request of legislature.
D—On request of local prosecutor.
E—When in state's interest.
F—Under certain statutes for specific crimes.
G—On authorization of court or other body.
(a) Local prosecutors serve at pleasure of attorney general.
(b) Certain statutes provide for concurrent jurisdiction with local prosecutors.
(c) No local prosecutions or prosecutors.
(d) Only when requested by governor or legislature.
(e) To legislative leadership only or to legislature as a whole.
(f) In connection with grand jury cases.
(g) Will prosecute as a matter of practice when requested.
(h) Has concurrent jurisdiction with states' attorneys.
(i) No legal authority, but sometimes informally reviews laws at request of legislature.
(j) If the governor removes the district attorney for cause.

Table 10

ATTORNEYS GENERAL: CONSUMER PROTECTION ACTIVITIES AND SUBPOENA AND ANTITRUST POWERS

State or other jurisdiction	May commence civil proceedings	May commence criminal proceedings	Represents the state before regulatory agencies	Administers consumer protection programs	Handles consumer complaints	Subpoena powers (a)	Antitrust duties
Alabama	★	★	•	★	★	•	A, B
Alaska	★	★	★	★	★	★	B, C
Arizona	★	...	...	★	★	★	A, B, D
Arkansas	★	...	★	★	★	★	B, C, D
California	★	...	...	...	★	★	B, C, D
Colorado	★	★	★	★	★	•	B, C, D(b)
Connecticut	★	...	★	★	...	•	A, B, D
Delaware	★	★	★	★	...	★	A, B, C
Florida	★	★	...	★	★	★	A, B, C, D
Georgia	★	★	★	...	...	★	B, C, D
Hawaii	★	★	★	...	...	★	A, B, C, D
Idaho	★	...	★	★	★	•	D
Illinois	★	★	★	★	★	•	A, B, D
Indiana	★	...	...	★	★	...	B, C, D
Iowa	★	★	★	★	★	•	A, B, C, D
Kansas	★	★	★	★	★	★	B, C, D
Kentucky	★	★	★	★	★	★(c)	A, B, D
Louisiana	★	...	★	...	★	★	B, C
Maine	★	★	★	★	★	•	B, C
Maryland	★	★	★	★	★	★	B, C, D
Massachusetts	★	★	★	★	★	•	A, B, C, D
Michigan	★	★	★	★	★	•	A, B, C, D
Minnesota	★	...	★	★	★	•	B, D
Mississippi	★	...	★	★	★	•	B, C
Missouri	★	...	...	...	★	•	A, B, C, D
Montana	★	★	★	...	...	★	B, C, D
Nebraska	★	...	★	★	★	•	A, B, C(d), D
Nevada	★	★	...	...	★	★	A, B, C, D
New Hampshire	★	★	★	...	★	•	B, C, D
New Jersey	★	★	★	★	★	★	A, B, C, D
New Mexico	★	★	★	★	★	•	A, C
New York	★	★	...	...	★	★	A, B, C, D
North Carolina	★	...	★	★	★	•	A, B, C, D
North Dakota	★	★	...	★	★	★	C, D
Ohio	★	★	★	★	★	★	B, C, D
Oklahoma	★	...	★(e)	★	★	•	B, D
Oregon	★	★	★(c)	★	★	•	A, B, C, D
Pennsylvania	★	...	★	★	★	•	D
Rhode Island	★	★	★	★	★	•	A, B, C, D
South Carolina	★	★	★	...	★	•	A, B, C, D
South Dakota	★	★	...	★	★	•	A, B, C, D
Tennessee	★	★	★(c)	★	★	•	A, B, C, D
Texas	★	...	★	★	★	•	B, D
Utah	★	★(d)	★(d)	...	★(f)	★	A(g), B, C, D(g)
Vermont	★	★	★	★	★	•	A, B, C, D
Virginia	★	★(e)	★	★(f)	★(f)	•	A, B, C, D
Washington	★	...	★	★	★	•	A, B, D
West Virginia	★	...	★	★	★	★	A, B, D
Wisconsin	★	...	★	★	★	•	A, B, C, D
Wyoming	★	...	...	★	★	...	...
American Samoa	★	★	★	...	...	★	...
Northern Mariana Is.	★	★	★	★	★	★	B, C, D
Puerto Rico	★	★	★	★(e)	★(e)	★	A, B, C
Virgin Islands	★	★(h)	★	...	...	★	A, B(i), C, D

Key:

A—Has parens patriae authority to commence suits on behalf of consumers in state antitrust damage actions in state courts.

B—May initiate damage actions on behalf of state in state courts.

C—May commence criminal proceedings.

D—May represent cities, counties and other governmental entities in recovering civil damages under federal or state law.

(a) In this column only: ★ indicates broad powers and • indicates limited powers.

(b) Only under Rule 23 of the Rules of Civil Procedure.

(c) When permitted to intervene.

(d) Attorney general has exclusive authority.

(e) Limited.

(f) Attorney general handles legal matters only with no administrative handling of complaints.

(g) Opinion only, since there are no controlling precedents.

(h) May always prosecute in inferior courts. May prosecute in District Court by request or consent of U.S. Attorney General.

(i) May initiate damage actions on behalf of territory in District Court.

Table 11

ATTORNEYS GENERAL: DUTIES TO ADMINISTRATIVE AGENCIES AND MISCELLANEOUS DUTIES

State or other jurisdiction	Serves as counsel for state	Appears for state in criminal appeals	Duties to administrative agencies							
			Issues official advice	Interprets statutes or regulations	Conducts litigation: In behalf of agency	Conducts litigation: Against agency	Prepares or reviews legal documents	Represents the public before the agency	Involved in rule-making	Reviews rules for legality
Alabama	A, B, C	★(a)	★	★	★	★	★	★(b)	...	★
Alaska	A, B, C	★	★	★	★	★	★	...	★	★
Arizona	A, B, C	★(c,d)	★	★	★	★	★	...	★	★
Arkansas	A, B, C	★(a)	★	★	★	...	★	★	★	★
California	A, B, C	★(a)	★	★	★	★	★	...	...	★
Colorado	A, B, C	★(a)	★	★	★	★	★	...	★	★
Connecticut	A, B, C	...	★	★	★	...	★	...	★	★
Delaware	A, B, C	★(a)	★	★	★	★	★	★	★	★
Florida	A, B, C	★(a)	★	★	★	...	★	★	★	★
Georgia	A, B, C	★(b,c)	★	★	★	★	★	...	★	★
Hawaii	A, B	★(b,c)	★	★	★	★	★	★	★	★
Idaho	A, B, C	★(a)	★	★	★	★	★	...	★	★
Illinois	A, B*, C	★(b,c,e)	★	★	★	★	★	★	...	★
Indiana	A, B, C	★(a)	★	★	★	...	★	...	★	★
Iowa	A, B, C	★(a)	★	★	★	★	★	...	...	★
Kansas	A, B, C	★(a)	★	★	★	★	★	...	...	★
Kentucky	A, B*, C	★	★	★	★	★	★	...	★	★
Louisiana	A, B, C	★(c)	★	★	★	★	★	...	★	★
Maine	A, B, C	★(b,d)	★	★	★	...	★	...	★	★
Maryland	A, B, C	★	★	★	★	★(b)	★	★	★	★
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Michigan	A, B, C	★(b,c,d)	★	★	★	...	★	★	★	★
Minnesota	A, B, C	★(c)	★	★	★	★	★	★	...	★
Mississippi	A, B, C	★	★	★	★	...	★	...	★	★
Missouri	A, B, C	★	★	★	★	...	★	...	★	★
Montana	A, B, C	★	★	★	★	...	★	...	★	★
Nebraska	A, B, C	★	★	★	★	★	★	...	...	★
Nevada	A, B, C	★(d)	★	★	★	...	★	★	★	★
New Hampshire	A, B, C	★(a)	★	★	★	★	★	★	★	★
New Jersey	A, B, C	★(d)	★	★	★	★	★	...	★	★
New Mexico	A, B, C	★(a)	★	★	★	★	★	★	★	★
New York	A, B, C	★(b)	★	★	★	★	0	★	...	0
North Carolina	A, B, C	★	★	★	★	★	★	★(b)	★	★
North Dakota	A, B, C	★(b)	★	★	★	...	★	...	★	★
Ohio	A, B, C	...	★	★	★	★	★	★	★	0
Oklahoma	A, B, C	★(b)	★	★	★	★	★	★	★	★
Oregon	A, B, C	★	★	★	★	...	★	...	★	★
Pennsylvania	A, B, C	★(c)	★	★	★	★	★	...	★	★
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Texas	A, B, C	★(c)	★	★	★	★	★	...	★	★
Utah	A, B, C	★(a)	★	★	★	★	★	★	★	★
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Wisconsin	A, B, C	★(b)	★	★	★	★	★	★(b)	★	8
Wyoming	A, B, C	★(a)	★	★	★	...	★	...	★	★
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Puerto Rico	A, B, C	★	★	★	★	...	★	...	★	★
Virgin Islands	A, B, C(h)	★	★	★	★	...	★	...	★	★

Key: A—Defend state law when challenged on federal constitutional grounds.
B—Conduct litigation on behalf of state in federal and other states' courts.
C—Prosecute actions against another state in U.S. Supreme Court.
*Only in federal courts.
(a) Attorney general has exclusive jurisdiction.
(b) In certain cases only.
(c) When assisting the local prosecutor in the appeal.
(d) Can appear on own discretion.
(e) In certain courts only.
(f) If authorized by the governor.
(g) Because there are no local prosecutors.
(h) Except in cases in which the U.S. Attorney is representing the Government of the Virgin Islands.

(b) The commissioner of administration may

(1) adopt regulations that the commissioner considers necessary to implement AS 44.21.400 — 44.21.440;

(2) report on the operation of the office of public advocacy when requested by the governor or legislature or when required by law;

(3) solicit and accept grants of funds from the federal government and from private foundations, and allocate or restrict the use of those funds as required by th grantor. (§ 1 ch 55 SLA 1984)

Sec. 44.21.420. Employment of office personnel. (a) The commissioner of administration may employ guardians ad litem, public guardians, clerical staff, and other assistants that the commissioner determines are needed to perform the duties set out in AS 44.21.410. Employees under this subsection are in the classified service under AS 39.25.100.

(b) The commissioner of administration may employ attorneys needed to perform the duties set out in AS 44.21.410. Attorneys employed by the commissioner of administration in the office of public advocacy are in the partially exempt service under AS 39.25.120.

(c) The commissioner of administration may contract for services of court-appointed visitors and experts needed to perform the duties set out in AS 44.21.410. The commissioner may contract with attorneys to provide legal representation, and with other persons to provide guardian ad litem services, as needed to perform the duties set out in AS 44.21.410. The commissioner may determine the rate of compensation for contractual services, taking into account the time involved, the skill and experience required, and other pertinent factors. (§ 1 ch 55 SLA 1984)

Sec. 44.21.430. Attorneys engaged by public advocacy office. (a) Only an attorney admitted to the practice of law in this state may be employed or retained under contract by the office of public advocacy to provide legal representation.

(b) An attorney employed by the office of public advocacy may not engage in the private practice of law unless the attorney provides services to the office as an independent contractor. § 1 ch 55 SLA 1984)

Sec. 44.21.440. Conflicts of interests. Services and legal representation rendered by the office of public advocacy, whether performed by a person under contract or by an employee of the office, shall be provided in a manner that avoids conflicts of interests. (§ 1 ch 55 SLA 1984)

Chapter 23. Department of Law.

Section

10. Attorney general
20. Duties
30. Promotion of uniform laws
40. Records, reports and recommendations on uniform laws
50. Employment of attorney to appear before distant court
60. Discovery of information and data from transportation business

Sec. 44.23.010. of the Department o

Collateral reference 2d, Attorney General, § Jur. 2d, States, Dependencies, § 62.

Sec. 44.23.020. I of the governor and

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Sec. 44.23.010. Attorney general. The principal executive officer of the Department of Law is the attorney general. (§ 9 ch 64 SLA 1959)

Collateral references. — 7 Am. Jur. 2d, Attorney General, § 1 et seq.; 72 Am. Jur. 2d, States, Territories and Dependencies, § 62.

7A C.J.S. Attorney General, § 1 et seq.; 81A C.J.S. States, § 61.

Sec. 44.23.020. Duties. (a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

(1) bring, prosecute and defend all necessary and proper actions in the name of the state for the collection of revenue;

(2) represent the state in all civil actions in which the state is a party;

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(4) administer state legal services (including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs), and give legal advice on a law, proposed law or proposed legislative measure upon request by the legislature or a member of the legislature;

(5) draft legal instruments for the state;

(6) make a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office, and

(B) on needed legislation or amendments to existing law; and

(7) perform all other duties required by law or which usually pertain to the office of attorney general in a state;

(8) prepare, publish and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law, division of consumer protection, before publication. (§ 9-1-5 ACLA 1949; am § 1 ch 128 SLA 1959; § 9 ch 64 SLA 1959; am § 1 ch 8 SLA 1976)

NOTES TO DECISIONS

Powers and duties are those ascribed at common law. — This section indicates that the office of the attorney general is to function with those powers and duties normally ascribed to it at common law. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Under the common law, an attorney general is empowered to bring any

action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Authority to sue for restitution for defrauded land purchasers. — The state has the authority to bring suit in the public interest on the basis of common-law fraud to obtain restitution for defrauded land purchasers. State v. First Nat'l Bank, Sup. Ct. Op. No. 2591 (File Nos. 5006, 5107), 660 P.2d 406 (1982).

What control over state's legal business includes. — Discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Discretion not subject to judicial review. — When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Although the supreme court has jurisdiction to entertain a case and to find the existence of legal authority, it does not have power to control the exercise of the attorney general's discretion as to whether he will take action in any particular cases of contempt for nonsupport. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Court may not order prosecution of contempt for nonsupport. — The authority to proceed under this section does not empower the court to order the attorney general to prosecute any particular contempt for nonsupport. Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Contempt of support order is violation of state law. — In light of the substantial state interest in the enforcement of child support orders, contempt of such an order is a violation of state law within the meaning of subsection (b)(3). Public Defender Agency v. Superior Court, Sup. Ct. Op. No. 1140 (File No. 2071), 534 P.2d 947 (1975).

Cited in State v. R.H., Ct. App. Op. No. 375 (File No. 7768), P.2d (1984).

Collateral references. — 7 Am. Jur. 2d Attorney General, § 9 et seq.

7A C.J.S. Attorney General, § 7 et seq.

Waiver by attorney general of state's immunity from suit, 42 ALR 1484; 50 ALR 1408.

Power of attorney general as to compromise and settlement or dismissal of suit or proceeding, 81 ALR 124.

Prohibition as means of controlling attorney general, 115 ALR 14; 159 ALR 627.

Right or duty of attorney general to intervene in civil suits, 163 ALR 1346.

Sec. 44.23.030. Promotion of uniform laws. (a) The Department of Law shall examine, collect, and arrange data as to prevailing laws in the United States and other countries on marriage, divorce, insolvency, wills, executors and administrators, probate practice, taxation, commercial law, civil and criminal practice in the courts, elections, insurance, real property, all phases of corporation law, forms of notarial certificates, vital statistics, attachments, banking, partnership, and other subjects where uniformity is considered important. It shall investigate the best means to assimilate and make uniform the laws of the several states, territories, and districts of the United States, and shall investigate and report upon these matters whenever the governor or the legislature refers them to it for investigation or action.

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(b) At least one member of the Department of Law shall attend each meeting of the National Conference on Uniform State Laws. (§§ 10-5-5, 10-5-6 ACLA 1949)

Collateral references. — 1 and 2 Am. Jur. 2d, Administrative Law, 1 et seq.; 63 Am. Jur. 2d, Public Officers and Employees, § 22; 72 Am. Jur. 2d, State, Territories and Dependencies, § 5; 73 Am. Jur. 2d, Statutes, §§ 338 to 341.

73 C.J.S. Public Administrative Law, § 1 et seq.; 81A C.J.S. States, §§ 20 to 33.

Sec. 44.23.040. Records, reports and recommendations on uniform laws. The Department of Law shall, not less than 30 days before the beginning of each regular session of the legislature, present to the governor a report of its activities under AS 44.23.030, together with recommendations which it considers proper. The governor shall transmit the report and recommendations to the legislature when it convenes. (§ 10-5-7 ACLA 1949)

Sec. 44.23.050. Employment of attorney to appear before distant court. If a matter in which the state is interested is pending in a court distant from the capital, and it is necessary for the state to be represented by counsel, the attorney general, with the approval of the governor, may engage one or more attorneys to appear for the attorney general. The attorney general may pay for these services out of appropriations for the attorney general's office. (§ 9-1-16 ACLA 1949; am § 2 ch 128 SLA 1959)

Sec. 44.23.060. Discovery of information and data from transportation business. (a) In a hearing or proceeding in which the attorney general appears before a board, court, commission, committee, or officer of the United States involving traffic and commerce or rates of transportation between points in intrastate or interstate transportation, the attorney general may (1) demand from a person engaged in the transportation business between those points, that information which is (A) pertinent at the hearing or proceeding or (B) necessary to prepare for the defense of the interests of the people of the state at the hearing or proceeding; and (2) may require by notice in writing that the person furnish for inspection, within a reasonable time, books or other records in the possession of the person showing (A) the amount of freight and passenger traffic to and from or in the state; (B) the rates charged on each class of freight or passenger; (C) the carriage expense; (D) other expense in aggregate and detail including overhead charges; (E) the bonded and other indebtedness and interest charges; (F) the gross capital invested and how invested; (G) amounts charged off for depreciation; (H) the gross and net income; and (I) other data, either in detail or the aggregate, necessary or pertinent in the hearing or proceeding.

(b) If the person does not furnish the data, information, books, or records for inspection by the attorney general within a reasonable

time, upon a written demand by the attorney general which specifically sets out the information required, and the reason and need for its use in the hearing or proceeding, the attorney general may present to the judge of a state court a petition in the name of the state for the furnishing of the data, information, books or records for inspection. The petition shall set out the nature of the hearing or proceeding for which the information is required, the necessity or materiality of it and other facts which are pertinent to showing the court the importance of obtaining the information.

(c) If the court is satisfied that the petition is made in good faith to obtain information necessary or important to the state or its people at the hearing or proceeding designated and that the information can or ought to be supplied to the state, the court shall issue an order directing the person to appear before the court on a certain day and hour to show cause why an order should not issue directing the furnishing of the data, records, or books or part of them as the court considers proper. The order shall be served on the person as other process of the court.

(d) At the time set in the order, or at another time set by the court, the court shall hear and determine the issues formed by the petition and the answer to it, if filed, and shall determine whether (1) the information or data mentioned in the petition is necessary or important to the state in the hearing in which it is proposed to be used; (2) it can be obtained; and (3) the person should produce it or a part of it for the purpose designated.

(e) If the court finds that the information or data is important to the petitioner in preparing for the trial or is necessary or important at the hearing and that it should be furnished the attorney general for preparation for use in or production at the hearing, the court shall enter an order setting out the time within which the information or data shall be furnished or produced for inspection and whether in whole or in part and what part.

(f) If the person does not furnish the attorney general with the information for inspection in the manner and within the time set out in the order, the person is guilty of contempt and is punishable by a fine of not more than $5,000. The fine shall be paid to the state treasury. (§ 9-1-11 ACLA 1949)

Chapter 25. Department of Revenue.

Section
10. Commissioner of revenue
20. Duties of department

Sec. 44.25.010. Commissioner of revenue. The principal executive officer of the Department of Revenue is the commissioner of revenue. (§ 10 ch 64 SLA 1959)

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Anch. Times 7/16/85

Group wants vote on elected attorney general

Martin files petitions in Juneau

by Debbie Reinwand
Times Juneau Bureau

Juneau — Whether Alaska's attorney general should be an elected official or an appointed cabinet member has been debated by lawmakers for nearly a decade. This week, a group of Anchorage residents took the matter into their own hands.

Led by Rep. Terry Martin, R-Anchorage, and Joseph Brewer, a former state court judge, a group known as CIVIC (Citizens Involved in the Constitution) on Monday filed a petition requesting that an advisory vote on election of the attorney general be put before voters in the fall of 1986.

Currently, the state's top law enforcement officer is appointed by the governor. The petitioners would like Alaska voters to recommend whether that position should become an elected post as it is in 45 states.

"Alaskans are beginning to realize that the attorney general is in charge of enforcing and upholding the state's laws and in order to do the best possible job, that person should be elected by the people," said Martin. "That way if there's a problem, then he or she can be held accountable. And the best form of accountability is at the ballot box."

The petition filed by CIVIC would allow voters to cast an advisory vote on the issue — a vote that would not be legally binding.

"Under the initiative process, the voters cannot amend the state's constitution and a change like this requires a constitutional amendment. In that case, the best alternative is to push for an advisory vote," Martin said.

While voters cannot amend the constitution by initiative, lawmakers can instigate such a change and have tried unsuccessfully to do so in recent years.

Martin, Rep. Rick Uehling, R-Anchorage, and former Anchorage Republican Rep. Ramona Barnes all have introduced bills in the past five years that would have made the attorney general an elected position.

A two-thirds majority of both houses is needed to pass a proposed constitutional amendment, which also must win voter approval, according to Lt. Gov. Stephen McAlpine.

The process being used by CIVIC to put the matter before voters includes three phases. The first requires the petitioners to file with McAlpine their proposed advisory question, along with the signatures of 100 registered Alaska voters and a $100 filing fee.

Martin filed the check and more than 100 signatures Monday.

The petition must be reviewed and approved by the Division of Elections and Department of Law, then CIVIC will need to gather about 20,000 signatures prior to the start of the next legislative session in order for their proposal to be included on the general election ballot in November 1986.

State law requires that initiative proposals be completed and approved prior to the start of a legislative session so lawmakers can take up the issue if they wish to, according to McAlpine.

"The idea behind that is to prevent someone from coming in and dumping an initiative on the legislature without giving them the opportunity to address that issue," McAlpine said.

Martin said he expects the petition to gain the state stamp of approval and predicts the group will gather the necessary number of signatures by January 1986, when lawmakers return for the second session of the 14th Alaska Legislature.

Lawmakers in particular have been critical of the appointive process, saying an attorney general selected by the governor is likely to put the administration's interests before those of the public.

ANCHORAGE DAILY NEWS, November 3, 1981

Attorney General elect

Daily News Oct 3, 1981

Rodey calls for att

By STAN JONES
Daily News reporter

The chairman of the state Senate Judiciary Committee Monday called for a constitutional amendment to provide for the election of Alaska's attorney general. In a speech to the Alaska Association of Police Chiefs, State Sen. Pat Rodey, D-Anchorage, said the proposal would increase the accountability of the state's top lawyer to the people.

"Forty-three other states provide for the election of the attorney general," Rodey said, "and I believe it is time Alaska made it 44."

Rodey said the accountability of the attorney general had been cited as a concern to him by law enforcement professionals as well as ordinary citizens.

There have also been calls for electing district attorneys, but Rodey aide Kevin Bruce said Rodey feels that electing only the attorney general is "the best way to go, to ensure statewide that prosecution is uniform."

Last year, Rodey's committee passed out a measure which would place the question on the 1982 ballot. It is now in the Senate Rules Committee.

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September decline was the seventh l
past eight months but was a compar
small one, less than half as big as Au
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Marathon takeover bloc

CLEVELAND — A federal judge has l
a temporary restraining order barring
Mobil Corp. from taking further actio
purchase up to 40 million shares of
common stock in the Marathon Oil C
Marathon, the nation's 17th-largest o
company, opposed the $3.4 billion
takeover bid by No. 2 Mobil on antitr
grounds. U.S. District Judge Frank B.
signed a restraining order just before
midnight Sunday prohibiting Mobil fr
soliciting sellers of Marathon stock. T
order expires Nov. 10.

From Daily News

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SECTIONAL ANALYSIS
SJR9 Elected Attorney General

Sections 1, 2 and 3 of this bill are correlative amendments necessary to conform existing material in the constitution to the new material added. It is easier to follow if the analysis of these follows the new material.

Sec. 4 of the bill is the new material which is added to Article III of the Constitution. It consists of new sections 28 - 34.

Sec. 28 provides there shall be an attorney general and establishes qualifications. The attorney general must be:

(1) at least 30 years of age;

(2) a qualified voter;

(3) a resident for the five years immediately preceding filing;

(4) a United States citizen for seven years;

(5) licensed to practice law in this state; and

(6) possess other qualifications prescribed by law.

Sec. 29 provides for election of the attorney general. The ballot is nonpartisan and candidates file for office. The initial election is the primary and the two hghest vote getters at the primary appear on the general election ballot. The one receiving the highest vote in the general election is elected.

Sec. 30 limits service to two full terms unless a full term has intervened.

Sec. 31 provides for an election to fill a vacancy in office with interim appointment by the governor.

Sec. 32 requires compensation to be prescribed by law and may not be diminished during a term unless by general law applying to all salaried officers of the state.

Sec. 33 provides that the attorney general is the legal advisor of all state officials and performs other duties prescribed by law.

Sec. 34 provides that the first election for an attorney general shall be at the general election first held after

the office was created. It sets the term at four years commencing the first Monday in December following the election.

Sec. 1 of the bill amends section 23 of Article III of the Constitution to take away the power of the governor to change the organization and function of the attorney general's office.

Sec. 2 of the bill amends section 24 of Article III of the Constitution to provide the attorney general's office is not under supervision of the governor.

Sec. 3 of the bill excepts the attorney general from the appointment power of the governor. It also corrects the designation of Secretary of State to lieutenant governor.

Sec. 5 of the bill provides for placing the proposed amendments on the ballot at the next general election.

ATTORNEYS GENERAL OF ALASKA

From 1913 to 1916 the Territory of Alaska was served by Territorial Counsel John H. Cobb. In 1915, the legislature created the Office of the Attorney General, to become effective after the general election in 1916.

George B. Grigsby	1916-1919
Jeremiah C. Murphy	1919-1920
John Rustgard	1920-1933
James S. Truitt	1933-1941
Henry Roden	1941-1945
Ralph J. Rivers	1945-1949
J. Gerald Williams	1949-1959
John L. Rader	1959-1960
Ralph E. Moody	1960-1962
George N. Hayes	1962-1964
Warren C. Colver	1964-1966
D. A. Burr	1966-1967
Edgar Paul Boyko	1967-1968
G. Kent Edwards	1968-1970
John E. Havelock	1970-1973
Norman C. Gorsuch	1973-1974
Avrum M. Gross	1974-1980
Wilson L. Condon	1980-1982
Norman C. Gorsuch	1982-present

(4/85)

Extracted from: Powers, Duties and Qualifications of State Attorneys General (1977) (Study by National Assoc. of A.G.s)

6. SELECTION, TERM AND REMOVAL

This chapter examines the important issues of how the Attorney General is selected, how long he serves, how he can be removed, and how a vacancy in the office can be filled. Some of these issues, particularly that of election or appointment, have been subject to controversy since the first state governments were established. This report discusses existing practices and presents the arguments on both sides of these issues.

Method of Selection

Table 6 shows methods of selecting the Attorney General. He is popularly elected in forty-two states. He is appointed by the Governor in six states (Alaska, Hawaii, New Hampshire, New Jersey, Pennsylvania, and Wyoming), the three territories (Guam, Samoa and the Virgin Islands), and the Commonwealth of Puerto Rico. In Maine, he is selected by the Legislature and in Tennessee, by the Supreme Court.

Now elected

The Attorney General is the most prevalent elective official in state governments except for the Governor, who is elected in all jurisdictions. The Treasurer is elected in thirty-nine jurisdictions, the Secretary of State in thirty-eight, the Auditor in twenty-five, and the Superintendent of Public Instruction in nineteen, compared to forty-two states in which the Attorney General is elected.[87] The 1970s witnessed a marked acceleration of the trend toward election of the Governor and Lieutenant Governor on a single ballot and such a practice is now followed in twenty-two jurisdictions. Thus, the Attorney General is actually the most common official who is elected on a single ballot. Where very few, but more than one, state executive officials are elected, the Attorney General is usually included among these few. He is, for example, among the three executive officials elected in Virginia, among the four elected in Maryland, Michigan and New York, and among the five elected in Rhode Island, Colorado, and Utah. However, he is not one of the two elected officers in Alaska, Hawaii, Guam, and the Virgin Islands, the four in Pennsylvania, nor the five in Wyoming.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

Most of the first state constitutions specified that the legislature would choose the Attorney General. The concept of universal suffrage had not yet taken hold, nor had the idea of direct election of many officials.

87. Council of State Governments, THE BOOK OF THE STATES, 114-115, 121-122 (1976-77).

TABLE 6: SELECTION AND TERM OF ATTORNEYS GENERAL

	Elected	Appointed by	With Consent Of	Length of Term	May succeed Himself
Alabama	x			4	Yes
Alaska		Governor	Legislature	4	Yes
Arizona	x			4	Yes
Arkansas	x			2	Yes
California	x			4	Yes
Colorado	x			4	Yes
Connecticut	x			4	Yes
Delaware	x			4	Yes
Florida	x			4	Yes
Georgia	x			4	Yes
Guam		Governor	Legislature	Indefinite	Yes
Hawaii		Governor	Senate	4	Yes
Idaho	x			4	Yes
Illinois	x			4	Yes
Indiana	x			4	Yes
Iowa	x			4	Yes
Kansas	x			4	Yes
Kentucky	x			4	No
Louisiana	x			4	Yes
Maine		Legislature		2	Yes
Maryland	x			4	Yes
Massachusetts	x			4	Yes
Michigan	x			4	Yes
Minnesota	x			4	Yes
Mississippi	x			4	Yes
Missouri	x			4	Yes
Montana	x			4	Yes
Nebraska	x			4	Yes
Nevada	x			4	Yes
New Hampshire		Governor	Exec. Council	5	Yes
New Jersey		Governor	Senate	4	Yes
New Mexico	x			4	Yes
New York	x			4	Yes
North Carolina	x			4	Yes
North Dakota	x			4	Yes
Ohio	x			4	Yes
Oklahoma	x			4	Yes
Oregon	x			4	Yes
Pennsylvania	X	~~Governor~~	~~Senate~~	4	Yes
Puerto Rico		Governor	Senate	Indefinite	Yes
Rhode Island	x			2	Yes
Samoa		Governor		Indefinite	Yes
South Carolina	x			4	Yes
South Dakota	x			4	Yes
Tennessee		Sup. Court		8	Yes
Texas	x			4	Yes
Utah	x			4	Yes
Vermont	x			2	Yes
Virgin Islands		Governor	Senate	Indefinite	Yes
Virginia	x			4	Yes
Washington	x			4	Yes
West Virginia	x			4	Yes
Wisconsin	x			4	Yes
Wyoming		Governor	Senate	4	Yes

Andrew Jackson's administration brought a new ethic to American government. The common man was considered competent to vote and to hold office, and direct election of officials became the rule. State constitutions provided for election of numerous officials, usually including the Attorney General.

A study published in the Law Library Journal[88] showed how methods of selecting Attorneys General developed in nineteen states; of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. The trend then turned toward election. For example, North Carolina's 1776 Constitution provided for appointment by the legislature; its 1868 Constitution provided for election. Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election. Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election. Virginia's 1776 Constitution provided for selection by the legislature; its 1902 Constitution provided for election. Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

Wyoming, in 1899, became the first "new" state to provide for appointment of the Attorney General, thereby ending the trend toward popular election. Alaska's 1959 Constitution and Hawaii's of 1960 provided for Gubernatorial appointment, following the policy set by their territorial conventions in 1950 and 1956.

Strong arguments can be advanced for either system of selection. There is not necessarily a correlation between the selection process and the extent of the Attorney General's actual powers. For example, the Attorney General is elected in Delaware and appointed in Alaska, but in both jurisdictions he has control over all legal and prosecutorial functions. In some states, the Attorney General is independently elected, but he exercises little power at either the state or local level. Thus, a "strong" department of justice can be developed under either system of selection, but is not guaranteed by either.

Proponents of an appointive Attorney General usually base their arguments primarily on the need to strengthen the executive. As one view, the commentary on the Model State Constitution developed by the National Municipal League says that:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people,

88. Lewis Morse, Historical Outline and Bibliography of Attorneys General Reports and Opinions, 30 LAW LIBRARY JOURNAL 39-245 (1937).

> [illegible] equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.[89]

The Model Executive Article for state constitutions recommended by the Committee on Suggested State Legislation of the Council of State Governments limits statewide elective officials to the Governor and Lieutenant Governor, who are elected jointly. This article was developed by the Committee on Constitutional Revision of the National Governor's Conference.[90] Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. Proponents of an appointive Attorney General argue that his function is to advise the Governor, who should be permitted to choose his advisors. They believe that the two officials are more likely to maintain the close and harmonious relationship that is necessary for effective liaison if the Attorney General is appointed.

Advocates of appointment also contend that the elective process may not assure professional competence. The pressures of politics and the time involved in campaigning limit an Attorney General's abilities to serve effectively, and many highly competent people would not be willing to undergo the election process. They also argue that the Attorney General's primary function is to interpret the law, which is a technical task and should not involve the political process.

The arguments for an elective Attorney General were cogently summarized by Attorney General Louis J. Lefkowitz in a position paper submitted to the New York Constitutional Convention in 1967. General Lefkowitz reviewed the Attorney General's duties in some detail, pointing out they were predicated upon his role as an independent official, and concluded that:

> To sum it up-- an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and impartial advice to the Governor, the Legislature and State departments and agencies. He can appear in Court without fear or favor-- an attorney in the fullest and finest sense of the word.[91]

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89. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

90. The Council of State Governments, 1970 SUGGESTED STATE LEGISLATION, 3-4.

91. Attorney General Louis J. Lefkowitz, Position Paper of Louis J. Lefkowitz Attorney General, to Constitutional Convention, Committee on the Executive Branch, June 1, 1967, Albany, N. Y.

An equally strong position in favor of election was taken by Attorney General William J. Scott before an Illinois Constitutional Convention; he stressed that the Attorney General's roles of "government watchdog" and "attorney for the people" required independence from the Governor.[92]

The primary argument for an elective Attorney General is that he is an attorney for all the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs. As discussed elsewhere in this report, the courts increasingly recognize that the Attorney General is responsible to the people, not just to the government. It is further argued that the Attorney General has important administrative and legal functions, such as programs in consumer protection and environmental control. In executing these functions, an Attorney General is acting as an advocate for the people, not as agent of the executive branch. His duties usually include prosecution of election violations, collection of debts, and bringing of suits in the name of the people; these responsibilities are outside the scope of the Governor's duties.

Many arguments for election center around the fact that the Attorney General's duties are of the highest order and he should enjoy the same independence as a member of the judiciary. He should not be a creature of the Governor, but should render opinions solely on the basis of law. He should not be the advocate for a particular administration, but should be free to oppose policies which he considers inconsistent with the law and to investigate apparent wrongdoing.[93]

In reference to the argument that an appointed Attorney General is a non-political technician, it should be noted that appointment does not necessarily remove the office from politics. Some appointed Attorneys General have been politically active as potential candidates for other office or on behalf of the Governors they serve. At the federal level, Presidents have frequently named as Attorneys General persons who had been active in their campaigns. This has also been true in some states.

In his remarks to a legislative committee which was considering a constitutional amendment to make the office appointive, former Attorney General Meyer of Nebraska mentioned several arguments in addition to those usually advanced by proponents of election. These included the following points: the Governor can appoint men with legal training to his staff if he feels he needs lawyers of his own choosing. Much of the Attorney General's work is in areas in which the Governor has little or no interest,

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92. News from William J. Scott, Attorney General, State of Illinois, Feb. 16, 1970.

93. See summary of arguments presented to New York's constitutional conventions in Robert H. Gordon, The Relationship Between the Attorney General and Agency Counsels in New York State, (Unpublished Ph.D. Dissertation, Syracuse U.), Ch. 1 (1966).

eral adviser.[94]

Confirmation of Appointment

In all six states where the Governor appoints the Attorney General on a regular basis, the appointment is confirmed by either the Senate (Hawaii, New Jersey, Pennsylvania, Wyoming), both houses of the Legislature (Alaska), or by the Council (New Hampshire). Confirmation in Pennsylvania requires a two-thirds vote of all the members of the Senate.

In Puerto Rico and the Virgin Islands confirmation is also by the Senate. In Guam, appointments are made with the "advice and consent" of the legislature, but in Samoa appointment is by the Governor with no requirement for confirmation. Although all Pennsylvania Attorneys General of recent years have been in the same political party as the Governor, the requirement of approval of two-thirds of all elected members of the Senate for confirmation of the Attorney General gives the minority party considerable leverage over appointments. However, there has been no indication that this has caused problems.

The various model constitutional provisions that have been proposed differ on the need for confirmation. The Advisory Commission on Intergovernmental Relations' suggested constitutional provision for a short ballot for state officials provides for Senatorial confirmation of gubernatorial appointments. The Model State Constitution of the National Municipal League does not mention confirmation. There is no extensive literature on the precise manner in which appointments are to be confirmed.

Length of Term and Succession

Forty-four states presently provide a 4-year term for the Attorney General and four states a 2-year term. Tennessee sets the term at 8 years and New Hampshire at 5. In Guam, Puerto Rico, and the Virgin Islands, the Attorney General is appointed for an indefinite term. In Samoa the term is also of an indefinite length, although there is a minimum of 2 years for an initial appointment. Table 6 indicates the length of Attorneys General's terms and the statutory or constitutional rules on succession.

The trend is clearly toward longer terms. Most states initially limited terms of officals to 1 or 2 years, on the theory that frequent elections kept government closer to the people and prevented the accretion of power by elected officials. Many states prohibited successive terms on the grounds that official power must be limited. These arguments may have been cogent at a time when Attorneys General had relatively few duties to

94. Letter from Attorney General Clarence A. H. Meyer to Patton G. Wheeler, November 24, 1970.

perform, and those duties were relatively well-defined. Present Attorneys General, however, cannot effectively operate with a 2-year term, which does not allow time to master the duties and responsibilities of the office. Neither should they be subjected to the continuing campaign requirements imposed by an election every 2 years. For these reasons, NAAG has recommended that the Attorney General should be elected or appointed for a minimum term of 4 years and should be allowed to succeed himself.

The number of Attorneys General serving 2-year terms has declined drastically in recent decades. In 1937 there were twenty-one, but this number fell to nine by 1970, and then to four by 1976. Arizona went from 2 to 4 years in 1970, and Wisconsin and New Mexico in 1971. The 1972-73 legislative biennium saw four more states-- Iowa, Kansas, South Dakota, and Texas-- shift to a 4-year term for the Attorney General. Apparently only one jurisdiction has ever gone from a 4-year to a 2-year term; this occurred under Missouri's 1865 Constitution, which was adopted during Reconstruction; its 1875 Constitution later restored the 4-year term. Voters in Rhode Island, however, rejected a 1972 proposal which would have extended from 2 to 4 years the terms of all executive officers, including the Attorney General.

Succession to Office

There are few restrictions on Attorneys General serving successive terms. There are restrictions on Attorneys General succeeding themselves in only three states: Kentucky, New Mexico, and Alabama. Only Kentucky absolutely prohibits immediate succession by the Attorney General. Until 1968 Alabama allowed only one term, but an amendment that year permitted the limited succession. New Mexico restricts the Attorney General to two terms of 2 years each.

The Model State Constitution permits succession in the office of Governor because:

> The main argument favoring restriction in the term of the governor is fear of bossism or perpetuation through use of the powers of the office. This is always a possibility but the better argument seems against any form of restriction. Limitations of this kind restrict the right of the people to pass judgment upon the quality of the gubernatorial service performed for them and thus eliminates from the field the one candidate about whom the voters usually know the most. From a program policy point of view, a restriction on service in office affects the governor's ability to develop and implement a long-range plan.[95]

These arguments apply with equal validity to the office of Attorney General.

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95. National Municipal League, MODEL STATE CONSTITUTION (6th ed.) 66 (1963).

Removal from Office

There are several mechanisms for removing Attorneys General: impeachment, recall, or removal by the Governor, the legislature, or the courts. Information is not available on how often these methods have been used or how well they operated.

Of the fifty-four jurisdictions, thirty-six provide for impeachment. It is the only method of removal provided in twenty-one of these jurisdictions. Impeachment processes vary, but proceedings are usually instituted by the lower house and, if it votes to impeach, the charges are tried by the upper house. In New York, the judges of the court of appeals, the state's highest court, sit with the members of the Senate as a court of impeachment. In Nebraska, impeachment charges are proferred by the unicameral Legislature and tried before the state supreme court. In Missouri, impeachments are tried before the supreme court after charges are filed by the House of Representatives.

An impeachment proceeding is rare, and is used only under the most extraordinary circumstances. Apparently, the last impeachment trial of an Attorney General was in Kansas in 1934. That action resulted in an acquittal.[96] Whatever grounds are prescribed grounds for impeachment, the method is not a common means of removing officials. It can be utilized only when the legislature is in session and is quite time-consuming.

Fifteen states which provide for impeachment also provide alternative removal processes. In the ten jurisdictions where the Governor appoints the Attorney General, he may also remove him. In Hawaii, the Senate must consent to such removal. In New Jersey, the Attorney General can be removed by the Governor for cause only after an opportunity to be heard has been granted. In New Hampshire, the Governor and the Council may remove the Attorney General on address of both branches of the legislature. Five other states provide for Gubernatorial removal of the Attorney General. In Maine, the Governor and Council may remove on address of both branches of the legislature. In New York, removal is by the Governor and the Senate. The Governor of Arkansas, upon address of two-thirds of the members of each house of the legislature, may for good cause remove the Attorney General. In Michigan and West Virginia, the Governor may remove him without the consent of another authority.

The legislature stands alone as a removing authority in proceedings other than impeachment in seven states. Recall may be used to remove the Attorney General in Arizona, Colorado, Louisiana, North Dakota, Oregon, Washington, and Wisconsin; he is an elective officer in all of these states. Louisiana reports that the district court may remove the Attorney General, and Maryland indicates that removal is attendant to any conviction in a court of law.

As a result of a court decision, an Arizona Attorney General was removed from office in 1947, having been adjudged guilty of conspiring to violate the gambling laws of the state. The Governor considered the office

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96. New York Times, February 7, 1942, at 17.

vacant and appointed a new Attorney General. The former Attorney General, however, refused to vacate his office. Subsequent court action affirmed the validity of an act which provided that an office would be vacant if its incumbent was convicted of a felony. The court reasoned that the powers of impeachment were an added protection for the public, not the sole protection.[97]

Filling Vacancies

Vacancies in the office of Attorney General may be filled by appointment of the Governor, the legislature, or the supreme court. An overwhelming majority of the jurisdictions indicate that the Governor fills vacancies as soon as they occur. In Maine, Massachusetts, New York and Virginia, the legislature fills vacancies; however, if it is not in session, the Governor makes the appointment. In Maine, he must have the approval of the Council. Tennessee provides that the Supreme Court will fill vacancies, since it normally appoints the Attorney General. In two states, Louisiana and New Jersey, the First Assistant or Deputy Attorney General becomes Attorney General until a successor is elected or appointed.

Where the Attorney General is appointed, it would seem proper that the appointing agent also fill vacancies, as is the case in all such jurisdictions. The rationale for filling vacancies when the office is elective is less clear. All but four of the states which have an elective Attorney General permit the Governor to make appointments. Three permit the legislature to name an Attorney General, and in one the deputy is promoted. Allowing the Governor to fill vacancies in an elective office seems contrary to the chief arguments for election, those concerning independence from the executive. It is also questionable whether a Governor of one party should be allowed to fill a vacancy in an office which was held by a member of the opposite party.

An Assistant or Deputy Attorney General is often promoted to fill a vacancy, even if this is not required by law. If the Deputy Attorney General is promoted to fill a vacancy, the chances of continuity in office programs are greater; however, the Attorney General may select his chief deputy according to different criteria from those he would use in selecting his own replacement.

Vacancy appointments for elective offices usually are valid only until the next general or next biennial election. At that time, if the original term has not elapsed, a short-term Attorney General is elected. This point was litigated in Oregon.[98] The statute creating the Oregon office in 1891 provided that the Attorney General would be elected for a full 4-year

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97. State ex rel. De Concini v. Sullivan, 66 Ariz. 348, 188 P.2d 592 (1948).

98. State ex rel. Baker v. Payne, County Clerk, 22 Ore. 335, 29 Pac. 787 (1892).

EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
And General Manager

FRED DICKEY
Executive Editor

Let the voters decide

IN FORTY of the 50 states, the attorney general is elected to his post.

It is a system that obviously works well, because the people are the ones who decide who should fill this high office. And an attorney general answerable to the people is one who is responsive and responsible.

It's strange, therefore, to see the burning vigor that marks the opposition to letting the people of Alaska choose their attorney general. Yet there are those who apparently fear the people.

For example:

"I can think of no single change that would be more damaging, more harmful, more dangerous to the character of government."

THAT'S THE astonishing view of Superior Court Judge Thomas Stewart of Juneau, who testified the other day before a legislative hearing on a proposed constitutional amendment that would require the election of Alaska's attorney general, who is now an appointee of the governor and answerable only to him.

More damaging? More harmful? More dangerous?

How can this be? What is being proposed is part and parcel of the democratic form of government in which the people have the right to elect their leaders. Are elections damaging, harmful and dangerous to the character of our government?

We confess to lacking the judicial wisdom that graces members of Alaska's Superior Court. But all along we thought the character of our government was rooted in the elective process.

There are many Alaskans — and we're among them — who believe the present system of having the attorney general appointed, rather than elected, has proved less than satisfactory.

We don't buy the argument of former Attorney General Norm Gorsuch that "legal competence and electablity are not necessarily equal." The statement is incomplete. The rest of it is that "legal competence and appointability are not necessarily equal, either."

IT'S QUITE POSSIBLE that an incompetent lawyer might be elected attorney general. But his shortcomings would be readily evident and it's a sure thing that he would serve only a single term.

It's also quite possible — in fact, very likely — that some extremely capable men and women would seek election to the office, were it up to the people to decide. An elected attorney general would be his or her own person, with his or her reputation on the line. And he or she would be no lackey to any governor, or any legislature.

There's no doubt that were the office an elected position, it would be used by many as a stepping stone to higher office — the governorship, for example, or a seat in the U.S. House or U.S. Senate. But what's wrong with that?

Rep. Fred Brown, the Fairbanks Democrat who heads the House Judiciary Committee sponsoring this constitutional change, sees this as a means of strengthening government. So do we. And we hope he prevails so that this matter can be brought to the ballot for a vote of the people.

[illegible] in 1891. Further, it mentioned that vacancies would be filled by Gubernatorial appointment until the next general election, when an Attorney General would be chosen to fill out the term or commence a new term. The Governor appointed an Attorney General in 1891. The question of the case was whether there was to be an election to fill out the first "quasi-term" in the general election of 1892. The court ruled that there was to be such an election.

The Supreme Court of Georgia reached the opposite conclusion in a 1939 case.[99] It held that the office of Attorney General was created under the judicial article, hence the rule that provisions for elections to fill vacancies in executive positions did not apply to it. The Gubernatorial appointee to fill a vacancy created by a resignation was to serve out the full 4-year term of office without standing for election.

99. Wood v. Arnall, 189 Ga. 362, 6 S.E.2d 722 (1939).

1.4 Selection and Term

This chapter examines the important issues of how the Attorney General is selected, how long he serves, how he can be removed, and how a vacancy in the office can be filled. Some of these issues, particularly that of election or appointment, have been subject to controversy since the first state constitutions were formulated and will continue to be debated. This Report discusses existing practice and presents the arguments on both sides of these issues.

1.41 Method of Selection

Table 1.41 shows methods of selecting the Attorney General. He is popularly elected in forty-two states. He is appointed by the Governor in six states (Alaska, Hawaii, New Hampshire, New Jersey, Pennsylvania, and Wyoming), the three territories (Guam, Samoa and the Virgin Islands), and the Commonwealth of Puerto Rico. In Maine, he is selected by the Legislature and in Tennessee, by the Supreme Court.

Present Selection Methods

The Attorney General is the most prevalent elective official in state government, with the exception of the Governor, who is elected in all states. The Treasurer is elected in forty states, the Secretary of State in thirty-nine, the Lieutenant Governor in thirty-eight, the Auditor in twenty-nine and the Superintendent of Public Instruction in twenty-four.[1] If the trend continues toward team election of the Governor and Lieutenant Governor on a single ballot as now occurs in nine states, the Attorney General will soon be the most common single elective official. Where very few, but more than one, state executive officials are elected, the Attorney General is usually included among these few. He is: among the three executives elected in Maryland, Michigan and New York; among the five in Rhode Island; and among the six elected in Wisconsin, Oregon and Connecticut. However, he is not one of the two elected officers in Alaska, the four in Pennsylvania, nor the five in Wyoming.

Historic Development

Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, the Attorney General was usually appointed by the Governor. The Attorney General of the United States still serves at the pleasure of the President.

Most of the first state constitutions specified that the legislature would choose the Attorney General. Some of the constitutions in effect during the revolutionary era even stipulated that the Governor would be so elected. The concept of universal suffrage had not yet taken hold, nor had the idea of direct election of many officials. Alexis de Tocqueville reflected the political theory prevalent in the 1830's in commenting on selection of officials by state legislatures, rather than by popular election:

> This transmission of the popular authority through an assembly of chosen men operates an important change in it by refining its discretion and improving its choice. Men who are chosen in this manner . . . represent only the elevated thoughts that are current in the community.[2]

Andrew Jackson's administration brought a new political ethic to American government. The common man was

1 See The Council of State Governments, THE BOOK OF THE STATES 1980 and Joseph Schlesinger, *The Politics of the Executive* in Jacob and Vines, POLITICS IN THE AMERICAN STATES (Boston: Little, Brown 1965) 211

2 Alexis de Tocqueville, DEMOCRACY IN AMERICA (Knopf ed. 1946) 205

1.41 THE ATTORNEY GENERAL

	Elected	Appointed by	With Consent of	Length of Term (Years)	May Succeed Himself
Alabama	X			4	No
Alaska		Governor	Legislature	Indefinite	Yes
Arizona	X			4	Yes
Arkansas	X			2	Yes
California	X			4	Yes
Colorado				4	Yes
Connecticut	X			1	Yes
Delaware	X			4	Yes
Florida	X			4	Yes
Georgia	X			4	Yes
Guam		Governor	Legislature	Indefinite	Yes
Hawaii		Governor	Senate	4	Yes
Idaho	X			4	Yes
Illinois	X			4	Yes
Indiana	X			4	Yes
Iowa	X			2	Yes
Kansas	X			2	Yes
Kentucky	X			4	No
Louisiana	X			4	Yes
Maine		Legislature		2	Yes
Maryland	X			4	Yes
Massachusetts	X			4	Yes
Michigan	X			4	Yes
Minnesota	X			4	Yes
Mississippi	X			4	Yes
Missouri	X			4	Yes
Montana	X			4	Yes
Nebraska	X			4	Yes
Nevada	X			4	Yes
New Hampshire		Governor	Council	2	Yes
New Jersey		Governor	Senate	4	Yes
New Mexico	X			2	Yes
New York	X			4	Yes
North Carolina	X			4	Yes
North Dakota	X			4	Yes
Ohio	X			4	Yes
Oklahoma	X			4	Yes
Oregon	X			4	Yes
Pennsylvania		Governor	Senate	4	Yes
Puerto Rico		Governor	Senate	Indefinite	Yes
Rhode Island	X	Governor		2	Yes
Samoa				2 or 4 min	Yes
South Carolina	X			4	Yes
South Dakota	X			2	Yes
Tennessee		Supreme Ct.		8	Yes
Texas	X			2	Yes
Utah	X			4	Yes
Vermont	X			2	Yes
Virgin Islands		Governor	Legislature	Indefinite	Yes
Virginia	X			4	Yes
Washington	X			4	Yes
West Virginia	X			4	Yes
Wisconsin	X			4	Yes
Wyoming		Governor	Senate	4	Yes
United States		President	Senate	Indefinite	Yes

deemed competent enough to vote and to hold office. Short terms of office ensured popular control of government, and direct election of officials became the rule.[1] State constitutions provided for election of numerous officials, including the Attorney General in most instances.

A study in the *Law Library Journal*[2] showed development of methods of selecting Attorneys General in nineteen states, of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. Some examples of the trends in selection in the older jurisdictions are given below:

North Carolina's 1776 Constitution provided for appointment by the legislature, its 1868 Constitution provided for election.

Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election.

Tennessee provided by 1831 legislation and by 1834 Constitution that the legislature would select the Attorney General; this appointive power was given to the Supreme Court by the 1870 Constitution.

Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election.

Virginia's 1776 Constitution provided for selection by the legislature, its 1902 Constitution provided for election.

Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

New York's 1777 constitutional convention appointed an Attorney General, then provided for selection by a Council of Appointment; the 1821 Constitution provided for selection by the legislature, and the 1846 Constitution provided for popular election.

Although the Jacksonian tradition is still basic to state government, other trends have manifested themselves and of those principles no longer command the nearly unanimous support they once held. The late 19th Century saw the introduction of such innovations as civil service, open primaries, executive budgets, and the short ballot for state officials. Wyoming, in 1899, became the first "new" state to provide for appointment of the Attorney General, thereby ending the trend toward popular election. Alaska's 1959 Constitution and Hawaii's of 1960 provided for Gubernatorial appointment, as did their territorial conventions in 1956 and 1950.

Recommendations for an appointive Attorney General were submitted to New York constitutional conventions in 1867, 1894, 1914, 1938, and 1967, but were not adopted. The New Jersey Constitutional Convention of 1947 continued the practice of Gubernatorial appointment, as did the Pennsylvania Constitution of 1968. The 1961-62 Michigan Constitutional Convention extensively debated the issue of election versus appointment. An alliance between two of three convention factions led to the acceptance of elective status for the Attorney General and Secretary of State and appointive status for the State Treasurer, Auditor, and Highway Commissioner. The Maryland Constitutional Convention of 1967 also retained elective status for the Attorney General.

Strong arguments can be advanced for either system of selection. There is not necessarily a correlation between the selection process and the Attorney General's actual powers. For example, the Attorney General is elected in Delaware and appointed in Alaska, but in both jurisdictions he has control over all legal and prosecutorial functions. In some states, the Attorney General is independently elected, but he exercises little power at either the state or local level. Thus, a "strong" department of justice can be developed under either system of selection, but is not guaranteed by either.

1 Richard S. Childs, *The Traditions of Government in the States*, in THE COURTS OF THE STATES 100 (6 TASKS IN POLICY MAKING, 1965).

2 Lucy Mayo, *Historical Outline and Bibliography of Attorneys General Reports and Opinions*, 40 LAW LIBRARY JOURNAL 91, 97 (1947).

The Case for Appointment

Proponents of an appointive Attorney General usually base their arguments primarily on the need to strengthen the executive. The commentary on the Model State Constitution developed by the National Municipal League says that:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.
>
> . . . Are the voters capable, or should they even be asked, to pass upon the abilities and performances of a large number of elected administrative officials? Would it not be better to give broad appointive and administrative powers to one individual, to enhance his position of leadership—making him master in his own house—and then hold him responsible through democratic electoral processes?[3]

Mr. Richard S. Childs, Honorary Chairman of the National Municipal League, adds that:

> Our objection to election of attorneys general applies to all the jobs on the tail of the state tickets and rests on the conviction that the attempt to have the people scrutinize the candidates for these secondary and undramatic jobs has failed completely for 100 years. The failure is called apathy . . . . Scrutiny by the people cannot be ordained or cajoled. It is a pervasive habit and fact and furthermore, it is a reasonable result of the attempt to impose on busy voters the duty of investigating and scrutinizing candidates for a technical non-representative office.[4]

The Model Executive Article for state constitutions recommended by the Committee on Suggested State Legislation of the Council of State Governments limits statewide elective officials to the Governor and Lieutenant Governor, who are elected jointly. This article was developed by the Committee on Constitutional Revision of the National Governor's Conference,[5] and corresponds to that recommended by the Advisory Committee on Intergovernmental Relations.[6]

In 1949, when a major reorganization of the federal government was underway, state reorganization was being discussed at the annual meeting of the National Association of Attorneys General. Attorney General Theodore D. Parsons of New Jersey noted that reorganization would require certain constitutional conditions:

> Most important of these conditions I would submit is a short ballot with the Governor being the only constitutional officer in the executive branch who is elected by the people, if possible; secondly, a reasonably secure term of office for the governor, the accepted term being four years, within which he may carry out a program and develop administration confidence; thirdly, a reasonable assurance in the constitution against invasion by either the legislature or the executive branches upon the proper providence of the other.[7]

This is the position of those experts who favor integrating administrative activities and concentrating their control over them in the hands of a responsible chief executive; most of the studies which have occurred since about 1910 on administrative reorganization have so

3 National Municipal League, MODEL STATE CONSTITUTION, 6th Ed. (1963), p. 19.

4 Letter from Richard S. Childs to Eaton G. Wheeler, November 18, 1970.

5 The Council of State Governments, 1970 SUGGESTED LEGISLATION, p. 11.

6 Advisory Commission on Intergovernmental Relations, A CATALOG OF STATE LEGISLATIVE PROPOSALS 11 (1966-1967).

7 National Association of Attorneys General, 1949 PROCEEDINGS 10-11.

argued. They hold that fragmentation leads to irresponsibility, but a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive.[10] Proponents of an appointive Attorney General argue that his function is to advise the Governor and the Governor should be permitted to choose his advisors. They believe that the two officials are more likely to maintain the close and harmonious relationship that is necessary for effective liaison if the Attorney General is appointed. His office is one through which the Governor is expected to discharge his responsibilities, and the Governor should therefore exercise some control over it.

Advocates of appointment also contend that the elective process may not assure professional competence. The pressures of politics and the time involved in campaigning limit an Attorney General's abilities to serve effectively, and many highly competent people would not be willing to undergo the election process. They also hold that the Attorney General's primary function is to interpret the law; this is a technical task and should not involve the electoral process.

The Case for Election

The arguments for an elective Attorney General were eloquently summarized by Attorney General Louis J. Lefkowitz in a position paper submitted to the New York Constitutional Convention in 1967. General Lefkowitz reviewed the Attorney General's duties in some detail, pointing out they were predicated upon his role as an independent official, and concluded that:

> To sum it up—an elected Attorney General has a measure of independence and a sense of personal and direct responsibility to the public. The elected official has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgment. He is in the best position to render maximum service to the People and *impartial* advice to the Governor, the Legislature and State departments and agencies. He can appear in Court *without fear or favor*—an attorney in the fullest and finest sense of the word.[11]

An equally strong position in favor of election was taken by Attorney General William J. Scott before the recent Illinois Constitutional Convention; he stressed the Attorney General's roles of "government watchdog" and "attorney for the people" as requiring independence from the Governor. General Scott's two predecessors concurred in this position.[12]

The primary argument for an elective Attorney General is that he is an attorney for all of the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs. It is further argued that the Attorney General has important administrative and legal functions, such as programs in consumer protection and environmental control. In executing these functions, an Attorney General is acting as an advocate for the people, not as agent of the executive branch. His duties usually include prosecution of election violations, collection of debts, and bringing of suits in the name of the people; these responsibilities are outside the scope of the Governor's duties.

Another argument against the concept of the Attorney General as counsel to the Governor is that the legislative branch may also rely on him for advice. In some states, he also has responsibilities toward the judiciary branch, such as serving as court reporter. Thus, he should not be responsible to any single branch of government, but can serve to strengthen checks and balances within the system.

The fear of loss of office should not deter the Attorney General from issuing an opinion. Since his duties are of the highest order, as high as any judicial officer, he should enjoy the same independence as a member of the judiciary. He should not be a creature of the Governor, but should render opinions solely on the basis of law. He should not be the advocate for a particular administration, but should be free to oppose policies which he considers inconsistent with the law and to investigate apparent wrongdoing.[13]

In reference to the argument that harmony must exist between the Governor and the Attorney General, it is noted that the Attorney General in over one-third of the jurisdictions is of a different political party than the Governor. While conflicts undoubtedly result from such partisan differences, effective working relationships apparently are maintained in most states. In reference to the argument that an appointed Attorney General is a nonpolitical technician, it is noted that a recent appointed Attorney General resigned to serve as chairman of a Senatorial campaign committee, while another was prominently mentioned as a Gubernatorial candidate. Appointment does not necessarily remove the office from politics.

Attorney General Clarence Meyer of Nebraska, in response to the argument that the Governor should be able to appoint his Attorney General, says that "The president of a large corporation *does not* name the general counsel. This is done by the board of directors and in some cases their action must be confirmed by a vote of the stockholders." Because of this, "the same general counsel sees a good many presidents come and go."[14]

In his remarks to a legislative committee which was considering a constitutional amendment to make the office appointive, General Meyer mentioned several arguments in addition to those usually advanced by proponents of election. These included the following points: the Governor can appoint men with legal training to his staff if he feels he needs lawyers of his own choosing; much of the Attorney General's work is in areas in which the Governor has little or no interest, such as advising county attorneys and handling routine criminal appeals; the Governor is only one of many state officials whom the Attorney General advises; a Governor can make mistakes in appointing someone to the office of Attorney General; in most states, the Governor has control over law enforcement officers. General Meyer quotes in conclusion from the remarks of a delegate to the 1920 Constitutional Convention in Nebraska:

> If there is any man who holds office in this state and who should be elected by, and responsible to the people of the state, it should be the Attorney General. The head of the state may have good judgment in his appointment, he may be able, from his experience, to appoint an excellent man to act as Attorney General, but I do not believe, under ordinary circumstances, that the judgment of one man is better than the combined judgment of the electors of the State of Nebraska on that proposition, and an Attorney General should be a check upon all the officers in the state, and he

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10 See, e.g., Orone Leyland, THE POLITICS OF STATE AND LOCAL GOVERNMENT 1969 [illegible]

11 Attorney General Louis J. Lefkowitz, *Position Paper of Louis J. Lefkowitz, Attorney General, to Constitutional Convention Committee on the Executive Branch* (June 1, 1967, Albany, N.Y.)

12 News from William J. Scott, Attorney General, State of Illinois, Feb. 16, 1970.

13 See summary of testimonies presented to New York's constitutional conventions in Robert H. Gordon, *The Relationship between the Attorney General and Agency Counsels in New York State* (unpublished Ph.D. Dissertation, Syracuse [illegible] 1966).

14 Letter from Attorney General Clarence A. H. Meyer to Edmund Wheeler, November 24, 1970.

should be free, if necessary, to proceed against any department or against any officer in the state. I do not want his hands tied. I do not want him to be responsible to any individual or to any particular department. I want him free in the discharge of his duties.[15]

No recent or current arguments defend the proposition that either the legislature or the courts should appoint the Attorney General; appointment is viewed as an executive function. It is assumed that the Attorney General is logically a member of the administrative branch of government, not the legislative or judicial. Furthermore, his impartiality in rendering opinions on legislation could be impaired if he remained responsible to the legislative body. The Attorney General represents many facets of the state before the court of the state; such being the case, there are obvious arguments against permitting the judges to select one of the advocates in a case.

Confirmation of Appointment

In all six states where the Governor appoints the Attorney General on a regular basis, the appointment is confirmed by either the Senate (Hawaii, New Jersey, Pennsylvania, Wyoming) both houses of the Legislature (Alaska) or by the Council (New Hampshire). Confirmation in Pennsylvania requires a two-thirds vote of all the members of the Senate.

In Puerto Rico and the Virgin Islands confirmation is also by the Senate. The C.O.A.G. questionnaire from Guam indicated appointments are made with "advice and consent" of the legislature, whereas Samoa mentions that appointment is by the Governor, without indicating any mechanism for confirmation.

The Advisory Commission on Intergovernmental Relations suggested constitutional provision for a short ballot for state officials provides for Senatorial confirmation. The Model State Constitution of the National Municipal League does not mention confirmation. There is no extensive literature, and presumably no vigorous arguments to be made, on the precise manner in which appointments are to be confirmed. Although all Pennsylvania Attorneys General of recent years have been in the same political party as the Governor, the requirement of approval of two-thirds of all elected members of the Senate for confirmation of the Attorney General gives the minority p[illegible] considerable leverage over appointments. We cannot now ascertain whether this has caused problems.

1.42 Length of Term and Succession

Thirty-eight states provide a four-year term for the Attorney General and nine provide a two-year term. Tennessee sets the term at eight years and New Hampshire at five. In Alaska, Guam, Puerto Rico, and the Virgin Islands, the Attorney General is appointed for an indefinite term. Samoa stipulates that he is appointed for a minimum of two years. Table 1.41 shows the length of term and succession.

Trend Toward Longer Terms

The trend is clearly toward longer terms. Most states initially limited terms of officials to one or two years, on the theory that frequent elections kept government closer to the people and prevented the accretion of power by elected officials. Many states prohibited successive terms on the theory that official power must be limited and there was no particular virtue in continuity of office-holding. These arguments may have been cogent at a time when Attorneys General had relatively few duties to perform, as the temporary abolition of the office in some jurisdictions indicates was the case, and those duties were relatively well defined. Present Attorneys General, however, cannot effectively operate with a two-year term, which does not allow time to master the duties and responsibilities of the office. Neither should they be subjected to the continuing campaign requirements imposed by an election every two years.

The number of Attorneys General serving two-year terms declined from twenty-one in 1937, to eighteen in 1950, to the present nine.[1] Arizona went from two to four years in 1970, and Wisconsin did so in 1971. Apparently only one jurisdiction has even gone from a four-year to a two-year term; this occurred under Missouri's 1865 Constitution, which was adopted during Reconstruction. Its 1875 Constitution restored the four-year term.

Michigan's 1963 Constitution lengthened the Attorney General's term from two to four years, as did North Dakota in 1964. Minnesota's first four-year Attorney General was elected in 1958, Nebraska's in 1966. New Mexico's proposed Constitution of 1969 included a provision for four-year terms, but was defeated at the polls.

Arguments for Longer Terms

Comments by members of Attorneys General's staffs in states with the two-year term in 1963 to the Committee on the Office of Attorney General were uniformly critical, as the following excerpts show:

> The Attorney General's two-year term does create many problems, namely lack of continuity of office procedure when a new Attorney General is elected, rapid turnover of personnel, and a great amount of money required for each political campaign.[2]
>
> The most obvious problem created by the two-year term is the frequency of campaign requirements.[3]

Maine said, in 1963, that there were no problems concerning the two-year term.[4]

In 1969, however, the Attorney General's office said that:

> The increase in work required of the Department of Attorney General has reached the point where a full-time Attorney General is needed! . . . A properly qualified attorney cannot afford to accept the position on a full-time basis for a two-year term.[5]

Efforts for a four-year t[illegible] are regularly defeated in South Dakota, where the Attorney General reported to C.O.A.G. that:

> The two-year term for the Attorney General does create serious problems. Perhaps most seriously, it has the effect of forcing the Attorney General into an almost continuous political campaign. That makes it imperative that the Attorney General be out of his office a great deal attending functions which are strictly political in nature or consequences rather than giving his time to the operations and efficiency of his office. The time limits of the term do not allow the Attorney General sufficient opportunity to develop programs, particularly when they are controversial, because they cannot be evaluated properly before the next election is at hand. Several attempts have been made to amend the Constitution to provide a four-year term for the Attorney General as well as for other constitutional officers. There has always been considerable support for the proposals from both the news media and the legislators, but for some reason it has never succeeded in passing.[6]

1.43 Succession to Office

There are few restrictions on Attorneys General serving successive terms. There are more on the Governor, who may not succeed himself in eleven states, and in twelve others may serve only two terms.[7] However,

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15 Record of Mr. Spellman, PROCEEDINGS 1920 CONSTITUTIONAL CONVENTION, STATE OF NEBRASKA 1406.

1 The Council of State Governments, THE BOOK OF THE STATES 1967-1968.

2 Letter from Assistant Attorney General David M. Ferrell of Arizona to Attorney General John B. Breckenridge, May 17, 1963.

3 Letter from Solicitor General Wallace M. Thompson of Iowa to Attorney General John B. Breckenridge, May 21, 1963.

4 Letter from Deputy Attorney General George C. West to Attorney General John B. Breckenridge, September 25, 1963.

5 Letter from Deputy Attorney General George C. West to Attorney General John B. Breckenridge, August 7, 1963.

6 N.A.A.G., Supplementary Questionnaire for South Dakota, October 8, 1969.

7 The Council of State Governments, THE BOOK OF THE STATES, 1[illegible]-1968.

there are such restrictions on Attorneys General in only three states: Kentucky, New Mexico and Alabama. Only Kentucky prohibits immediate succession. New Mexico restricts the Attorney General to two successive two-year terms and Alabama to two successive four-year terms. Alabama formerly provided for only one term, but a 1968 amendment permitted the limited succession.

Historical data on past restrictions are lacking, but good sense has led toward their elimination. The Model State Constitution permits succession in the office of Governor because:

> The main argument favoring restriction in the term of the governor is fear of bossism or perpetuation through use of the powers of the office. This is always a possibility but the better argument seems against any form of restriction. Limitations of this kind restrict the right of the people to pass judgment upon the quality of the gubernatorial service performed for them and thus eliminates from the field the one candidate about whom the voters usually know the most. From a program policy point of view, a restriction on service in office affects the governor's ability to develop and implement a long-range plan.[5]

These arguments apply with equal validity to the office of Attorney General.

N.A.A.G. recommends that the Attorney General should serve for a minimum term of four years and should be allowed to succeed himself. A shorter term makes it difficult for him to develop and execute programs, build a staff, or otherwise function effectively.

1.44 Removal from Office

There are several mechanisms for removing Attorneys General: impeachment, recall, or removal by the Governor, the legislature, or the courts.

Impeachment

Of the fifty-four jurisdictions, thirty-six provide for impeachment. It is the only method of removal provided in twenty-one of these jurisdictions. Impeachment processes vary. Professor Clyde F. Snider of the University of Illinois describes the typical process:

> Impeachment proceedings are instituted in the lower house of the legislature by the introduction of a resolution of impeachment. Such a resolution may be introduced by any house member, whereupon the matter is referred to a committee for investigation and report. On the basis of the committee's findings and recommendations, the house decides whether or not to vote charges in the form of 'articles of impeachment.' In most states a simple majority vote in the house is sufficient to impeach, although a few states require a two-thirds vote. If the house votes in favor of impeachment, it transmits a copy of the charges to the senate which resolves itself into an impeachment court to try the case. A 'board of managers' is constituted by the house from among its members to prosecute the proceedings before the senate. The accused official is entitled to be represented by counsel, and the entire proceedings are conducted in a manner similar to procedure before the regular courts. When the taking of testimony and the presentation of evidence have been concluded, the senate votes upon the question of conviction or acquittal. A two-thirds vote – in some states of all members and in others merely of those present – is ordinarily necessary to convict . . . , the consequences of impeachment may also vary.

Professor Snider adds that:

> In a few states the judgment is limited to removal from office, but more commonly it may also include disqualifications from holding any state office in the future. Most constitutions expressly except impeachment cases from the governor's pardoning power. Moreover, a person who has been impeached may, whether or not he is convicted on the impeachment charges, be prosecuted in the ordinary courts for any criminal act which he may have committed.[1]

In New York, the judges of the Court of Appeals, the state's highest court, sit with the members of the Senate as a court of impeachment. In Nebraska, impeachment charges are preferred by the unicameral Legislature and tried before the State Supreme Court. In Missouri, impeachments are tried before the Supreme Court after charges are filed by the House of Representatives.

An impeachment proceeding is rare, and is used only under the most extraordinary circumstances. Apparently, the last impeachment trial of an Attorney General was in Kansas in 1934. That action resulted in an acquittal.[2] Whatever are the prescribed grounds for impeachment, the method is not a common means of removing officials. It can be utilized only when the legislature is in session and is quite time-consuming.

Alternative Removal Processes

Fifteen states which provide for impeachment also provide alternative removal processes. In the ten jurisdictions where the Governor appoints the Attorney General, he may also remove him. In Hawaii, the Senate must consent to such removal. In New Jersey, the Attorney General can be removed by the Governor for cause only after an opportunity to be heard has been granted. In New Hampshire, the Governor and the Council may remove the Attorney General on address of both branches of the legislature. Five other states provide for Gubernatorial removal of the Attorney General. In Maine, the Governor and Council may remove on address of both branches of the legislature. In New York, removal is by the Governor and the Senate. The Governor of Arkansas, upon address of two-thirds of the members of each house of the legislature, may for good cause remove the Attorney General. In Michigan and West Virginia, the Governor may remove him without the consent of another authority.

The legislature stands alone as a removing authority in proceedings other than impeachment in eight states. Recall may be used to remove the Attorney General in Arizona, Colorado, Louisiana, North Dakota, Oregon, Washington, and Wisconsin; he is an elective officer in all of these states.

Professor Snider evaluates the recall procedure as follows:

> Recall provisions where they exist have been used but sparingly. . . . The recall is sometimes criticized on the grounds that it involves a further lengthening of the ballot. On the other hand, it has been contended that, without the recall as a means of holding to account officials vested with wide appointing powers, the short ballot would not be practical. Provision for the recall may make it possible to lengthen official terms without impairing popular control, but may also be used by factions defeated in an election to continue the election fight or to harass the winners while in office.[3]

Louisiana reports that the district court may remove the Attorney General, and Maryland indicates that removal is attendant to any conviction in a court of law.

As a result of a court decision, an Arizona Attorney General was removed from office in 1947, having been adjudged guilty of conspiring to violate the gambling laws of the state. The Governor considered the office vacant and appointed a new Attorney General. The former Attorney General, however, refused to vacate his office. Subsequent court action affirmed the validity of an act which provided that an office would be vacant if its incumbent was convicted of a felony. The court reasoned that the powers of impeachment were an added protection for the public, not the sole protection.[4] Section 1.6 discusses the Attorney General's relationship to the bar, and points out that disbarment proceedings may be brought against an Attorney General.

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5 National Municipal League, MODEL STATE CONSTITUTION, 6th ed. (1963).

1 Clyde F. Snider, AMERICAN STATE AND LOCAL GOVERNMENT 375 (1965).

2 *New York Times*, February 7, 1942, at 17.

3 Snider, *supra* note 1, at 167-8.

4 *State ex rel. De Concini v. Sullivan*, 66 Ariz. 188, 185 P. 2d 792 (1948).

1.45 Filling Vacancies

There are four methods of filling vacancies in the office of Attorney General, by appointment of the Governor, the legislature, or the supreme court, or by promotion of a deputy to the position of Attorney General.

Authority to Fill Vacancies

An overwhelming majority of the jurisdictions indicate that the Governor fills vacancies as soon as they occur. In Maine, Massachusetts, New York and Virginia, the legislature fills vacancies; however, if it is not in session the Governor makes the appointment. In Maine, he must have the approval of the Council. Tennessee provides that the Supreme Court will fill vacancies, since it normally appoints the Attorney General. In two states, Louisiana and New Jersey, the first assistant or deputy becomes Attorney General until a successor is elected or appointed.

Where the Attorney General is appointed, it would seem proper that the appointing agent also fill vacancies, as is the case in all such jurisdictions. The rationale for filling vacancies when the office is elective is less clear. All but four of the states which have an elective Attorney General permit the Governor to make appointments. Three permit the legislature to name an Attorney General, and in one the deputy is promoted. Allowing the Governor to fill vacancies in an elective office seems contrary to the chief arguments for election, those concerning independence from the executive. It is also questionable whether a Governor of one party should be allowed to fill a vacancy in an office which was held by a member of the opposite party.

If the Deputy Attorney General is promoted to fill a vacancy, the chances of continuity in office programs are greater, however, the Attorney General may select his chief Deputy according to different criteria from those he would use in selecting his own replacement.

Length of Vacancy Appointment

Vacancy appointments for elective offices usually are valid only until the next general or next biennial election. At that time, if the original term has not elapsed, a short-term Attorney General is elected. This point was litigated in Oregon.[1] The statute creating the Oregon office in 1891 provided that the Attorney General would be elected for a full four-year term in 1894. Further, it mentioned that vacancies would be filled by Gubernatorial appointment until the next general election, when an Attorney General would be chosen to fill out the term or commence a new term. The Governor appointed an Attorney General in 1891. The question of the case was simply, was there to be an election to fill out the first "quasi-term" in the general election of 1892? The court ruled that there was to be such an election.

The Supreme Court of Georgia reached the opposite conclusion in a 1939 case.[2] The office of Attorney General was created under the judicial article, hence the rule that provisions for elections to fill vacancies in executive positions did not apply to the office of Attorney General. The Gubernatorial appointee to fill a vacancy created by a resignation was to serve out the full four-year term of office without standing for election. The Attorney General was to stay in office until his successor's election had been declared by the General Assembly. The provision for the special vacancy election made no provision for such declarations; hence, the elections were deemed not to apply to the Attorney General.

1. [illegible]

2. [illegible]

1.5 Qualifications and Experience

The effectiveness of the office of Attorney General depends on the qualifications of the incumbent more than on any single factor. Statutory requirements can do little other than establish certain minimum standards. It is equally difficult to equate past experience of incumbents with their performance as Attorney General.

1.51 Qualifications Required

Table 1.51 gives the qualifications required for holding the office of Attorney General. Some states add other requirements, such as prohibition from holding other offices, to these qualifications. Only Pennsylvania and Guam indicate that no qualifications are required.

There was no minimum age requirement in seventeen jurisdictions. There were either implicit or explicit requirements in thirty-three jurisdictions. The minimum age was 21 in twelve jurisdictions, 25 in nine, 26 in two, 30 in six, and 31 in one. California, Connecticut and Maryland reported no minimum ages, but the requirement of five years bar membership in California and ten years in Maryland and Connecticut indicate a practical minimum age of 26 to 31 years, depending on state bar requirements.

Residence and citizenship are required by most jurisdictions. Citizenship is an express requirement in thirty-two jurisdictions and can be inferred in another eight from the provision that the Attorney General must be a qualified elector. Ten jurisdictions indicate that there is no citizenship requirement. Citizenship might be inferred elsewhere from requirements that the Attorney General be an elector. The Maryland court, for example, has said that the constitutional provision that the Attorney General be a qualified voter necessarily implies that he be a U. S. citizen.[1] Nineteen of forty-five states have residency requirements for the office. These range from six months in Michigan to ten years in Maryland and to ten years as an elector in Oklahoma. Ten states have requirements of two years or under, seven of from three to six years and two above six years.

Admission to the bar is a practical necessity for an Attorney General, but is not required in all jurisdictions. Although during Colonial times there were occasional non-lawyer Attorneys General, there is no evidence of a layman so serving after statehood. Formal requirements appear moot as the electorate probably would not choose a non-attorney to be its chief law officer. However, the question arose in the Canadian province of Alberta in 1937 when Premier William Aberhart, a layman, designated himself to be the provincial Attorney General. W. Kent Power examined the implications of Aberhart's tenure and concluded that both tradition and practicality required that the Attorney General should be a lawyer. He pointed out that the Legal Profession Act provided that no person "who is not enrolled as a barrister and solicitor in the books of the Law Society of Alberta shall commence, prosecute, carry on or defend any person in any Court . . ." Power added, "It is his duty to function as such, and under said . . . provision he cannot legally do so." Power concluded that:

> The history of the office, its duties and responsibilities, and especially the successful operation of our federal system, afford weighty support for the view that the relationship of the attorney general to the Lieutenant Governor is in the nature of a personal one. The name "King's attorney" crystallizes that idea. The Lieutenant-Governor has, therefore, at least as much

1. Crowe v. *Board of Supervisors of Elections of Baltimore City*, 240 Md. 555, 215 A. 2d 110 (1965).

	Age	Residence and Citizenship	Admission to Bar
Alabama	25	U.S. citizen—5 years in state	No
Alaska	None	U.S. citizen	No
Arizona	25	10 years U.S.—5 years in state	Yes
Arkansas	21	1 year in state	No
California	None	U.S. and state citizen	Yes—5 years (statutory
Colorado	25	U.S. citizen—2 years in state	Yes
Connecticut	None	Elector	Yes—10 years
Delaware	None	U.S. citizen—elector	Yes
Florida	30	U.S. citizen—elector	Yes—5 years
Georgia	25	U.S. citizen—elector	Yes
Guam	None	No requirements	No
Hawaii	None	Elector—1 year in state	Not required
Idaho	30	U.S. citizen—2 years in state	Yes
Illinois	None	U.S. citizen	Yes
Indiana	21	Elector	Yes
Iowa	None	Elector	No
Kansas			Yes—(case law)
Kentucky	30	U.S. citizen—2 years in state	Yes—8 years
Louisiana	None		Yes—5 years
Maine			Yes
Maryland	None	U.S. citizen—10 years in state	Yes—10 years
Massachusetts	None	None	Yes
Michigan	21	Elector—6 months in state	Yes
Minnesota	21	U.S. citizen for 3 months	Not statutory
Mississippi	26	U.S. citizen—elector	Yes—5 years
Missouri	None	U.S. citizen—1 year in state	Not required
Montana	30	U.S. citizen—2 years in state	Yes
Nebraska	None	No requirements	No
Nevada	25	U.S. citizen—2 years in state	No
New Hampshire	None	No requirements	Yes
New Jersey			No
New Mexico	30	U.S. citizen—5 years in state	Yes
New York	30	Elector	Not required
North Carolina	21	Elector	No
North Dakota	25		No—(but implied)
Ohio	21	U.S. citizen—elector	Yes
Oklahoma	31	U.S. citizen—10 years elector	No
Oregon	None		Yes
Pennsylvania	None	(No requirement for office)	No
Puerto Rico	21	U.S. citizen—elector	Yes
Rhode Island	21	U.S. citizen—elector	Yes
Samoa	None	U.S. citizen	No
South Carolina	None	U.S. citizen—elector	Not statutory
South Dakota	25	—1 year in state	Yes (case law)
Tennessee	None	None	Yes—(implied only)
Texas	None		No
Utah	25	U.S. citizen—elector	Yes
Vermont	21	U.S. citizen—elector	No
Virgin Islands	None	U.S. citizen	Yes
Virginia	21	U.S. citizen—elector	No
Washington	21	Elector—1 year in state	Yes
West Virginia	25	U.S. citizen—5 years in state	No
Wisconsin	None	U.S. citizen—elector	Yes
Wyoming	21	U.S. citizen—elector	Yes
United States	None	Required by general law	No

right to receive the personal, not the inversely delegated, opinion of his attorney as any private client has to expect the personal opinion of his solicitor rather than the transmitted opinion of one or more of the solicitor's partners or employees, even though that opinion may be the result or the amalgam of their research and points of view. Moreover it is the right and, in many instances, the duty of the attorney general to appear in Court on behalf of the Crown. No layman can fulfill that duty with competence.[2]

Many jurisdictions report specific statutory or constitutional requirements of bar membership. In addition, Kansas reports a case which implies this requirement.[3] The court defined the duties of the Attorney General so as to remove any doubt but that they required a person licensed to practice law and added:

> One who is admitted to practice as an attorney at law is an officer of the courts and both by virtue of his oath of office and the customs and traditions of the legal profession, he owes to the courts the highest duty of fidelity . . . . The attorney general by his motion to intervene and supersede the county attorney exercised his powers and duties under the constitution and appropriate statutes; this was as far as he could go as an executive officer and as an attorney and officer of this court. Since he is an officer of the judicial branch, under the separation of powers of the three branches of government, he was limited and restricted in his conduct before this court by the code of professional ethics to the same extent any other lawyer would be.

In at least six additional states the requirement can be implied from other statutory or constitutional duties of the Attorney General. In Minnesota, for example, the statutes make it unlawful for anyone except a member of the bar to appear in court as an attorney and, since the Attorney General's statutory duties require such appearances, his bar membership is necessarily implied. New Jersey statutes prohibit the Attorney General from engaging in the private practice of law during his term of office, thereby implying that he be admitted to practice.

Seven states provide a minimum period of time that one must be admitted to the bar before being eligible to serve as Attorney General. This period ranges from five years in California, Florida, Louisiana, and Mississippi to ten years in Maryland and Connecticut.

Several states have constitutional requirements providing that the Attorney General keep his office and his official records in the state capitol. A West Virginia court decision of 1943 rejected the contention that such requirements affected the eligibility of those seeking to become Attorney General. The provision took effect only after election.[4]

Though only tangentially a requirement for office, several states prohibit multiple office holding. For example, in Maine and Massachusetts the acceptance of a seat in Congress by the Attorney General automatically renders his office vacant.[5] Eight states provide that the Attorney General is constitutionally ineligible to sit in the state legislature. Other states stipulate that he may not hold any other office. In West Virginia, such a provision caused a dispute over the rightful claim to office. Lyell Clay describes the action:

> The state was set for the dispute when Clarence W. Meadows resigned from the office on May 15th, 1942. On May 26th, 1942, Wysong was appointed by Governor Matthew M. Neely to serve until the next general election and until his successor was elected and qualified. On November 3d, 1942, James Kay Thomas, who had been the Democratic nominee for Attorney General in the primary election held on August 4th, 1942, and who had entered the United States

2 W. Kent Power, *The Office of Attorney General*, XVII CAN. BAR REV. 410-29 (1939).

3 *State of Kansas ex rel. Foster v. City of Kansas City*, 186 Kan. 189, 350 P. 2d 37 (1960).

4 *State ex rel. Thomas v. Wysong*, 125 W. Va. 169, 24 S.E. 2d 161 (1943).

5 ME. CONST. art. I, § 2 (1820); MASS. CONST. pt. II, ch. VIII (1780).

Army on October 1st, 1942, received the majority of the votes cast for such office at the General election. Certificates of result were transmitted to the Governor and Secretary of State by the several counties, and in turn, were delivered by the Secretary of State to the Speaker of the House of Delegates on January 13th, 1943, which body declared Thomas, who personally appeared before it on that day, elected to the office of Attorney General for the unexpired term. Thomas took the oath of office, and then made demand upon Wysong for possession of the property and records pertaining to the office. Wysong refused, and Thomas thereupon brought a proceeding in mandamus before the Supreme Court of Appeals seeking induction into the office. The Supreme Court held that notwithstanding the fact that Thomas was then in the military service, he was eligible under the law for election to the office of Attorney General.[6]

A Nevada case in 1867 also involved dual office holding.[7] The Nevada Constitution provided that no person holding any lucrative office under the government of the United States or any other power would be eligible for any civil office of profit in state government. Robert Clarke was elected Attorney General in 1866. After he took office, the previous Attorney General, George Nourse, claimed possession of the office because Clarke was, prior to his election, the U. S. District Attorney for Nevada. Clarke replied that he had tendered a conditional resignation from the office of District Attorney effective in January, 1867. One day prior to the election, Clarke wrote a preemptory resignation to take effect immediately. The court ruled that Clarke would have had to resign unconditionally prior to the election day to be eligible for office. However, the court accepted his action the day prior to the election as an effective resignation and allowed him to remain in office.

6. Ex rel. Coe v. THE OFFICE OF ATTORNEY GENERAL OF WEST VIRGINIA 78 (1957).

7. *State of Nevada ex rel. Nourse v. Clark*, 1 Nev. 566 (1867).

1.52 Experience and Tenure

Much as the office itself varies widely, persons serving as Attorneys General between the years 1963 and 1968 exhibit a wide range of backgrounds and personal characteristics.[1] An analysis of such factors as education, age at assumption of office, occupation, public service, political affiliation, and tenure reveals a group solidly legalistic in character but as different in certain other respects as the jurisdictions they serve. Due to the professional and political aspects of the office, striking similarities appear in such areas as education and past public service.

Age at assumption of office, ranged between 29 and 63 years of age. In spite of the wide distribution, nearly 60 percent took office while in their 40's, following a career of public service spanning at least a decade. This modular characteristic is again seen in the fact that the average age of assuming the office of Attorney General is approximately 45 years.

By profession, all are attorneys at law, although very few moved directly into the position from private practice. More than one-half can be occupationally classified as public servants, due to their long period of employment in municipal, state, or federal government. Approximately 10 percent have occupational backgrounds as teachers, bankers, or businessmen. About one-fourth hold A.B. and LL.B degrees, with a scattering of B.S., LL.D., and M.A.'s.

The vast majority of the Attorneys General possess impressive records of past public service. Approximately 80 percent have served as municipal or county attorneys, while several served as mayors. Municipal, state, or federal judgeships were held by 20 percent. Two-fifths of the Attorneys General have served in the legislature, with a ratio of three times as many in the House as in the Senate. Several were elected Floor Leader. In the executive branch, one served as both Governor and Lieutenant-Governor, and others have held such positions as Secretary of State, agency director, and Executive Assistant. In the federal sphere, nearly 10 percent of the Attorneys General have served as United States Attorneys, and several others were employed by agencies, boards, and commissions. One-quarter of the Attorneys General served as Deputy or Assistant Attorney General.

In 1963, twenty-eight Attorneys General were Democrats, twenty were Republicans, and one was a Popular Democrat. In 1966, there were thirty-nine Democrats, thirteen Republicans, and the single Popular Democrat. By 1968 the ratio stood at thirty-three Democrats, nineteen Republicans, and the Popular Democrat.

Almost one-half of the Attorneys General for any given year between 1963 and 1968 had served one or more prior terms in that office. The period indicates a trend of increasing numbers of Attorneys General possessing tenure of eight or more years. While only 10 percent were so characterized in 1963, the number reached 20 percent in 1967 and 30 percent in 1968.

As with every aspect of the American political system, the past decade has subjected the office of the Attorney General to an overall evolutionary process. Needless to say, the changing demand structure of the position requires the services of highly educated individuals, with a background of public service and legal experience. The following tables, briefly summarized above, provide a survey of those who have held the office of Attorney General during the past six years.

One hundred and fifteen former Attorneys General responded to a C.O.A.G. survey in 1970.[2] This group included sixty-two Democrats, fifty-one Republicans and two from other parties. They had served an average of 4.61 years, taking office at an average age of 43 years. Prior to becoming Attorney General, fifty-two served as local government attorneys; twenty-four served as legislators; and thirty-four served on the Attorney General's staff. After serving as Attorney General, ten became Governors; two became United States Senators, and two became members of the House of Representatives. Nineteen became state Supreme Court justices and twelve became judges of other courts.

1. All data on PARTS are from the Council of State Governments' THE ATTORNEYS GENERAL OF THE STATES AND OTHER JURISDICTIONS (published annually).

2. Committee on the office of Attorney General. FORMER ATTORNEYS GENERAL ANALYZE THE OFFICE. September 1970.

1.521 THE ATTORNEYS GENERAL: EDUCATIONAL BACKGROUND

Degree Held	Number of Attorneys General Holding Degree					
	1963	1964	1965	1966	1967	1968
LL.B	53	50	52	51	50	50
A.B. and LL.B	26	22	19	21	23	25
B.S. and LL.B	6	8	12	9	7	7
J.D.	1	1	0	0	1	1
B.S.L. and LL.B	0	0	1	1	1	0
A.A. and LL.B	0	0	0	0	1	1
Ph.B. and LL.B	0	2	1	1	1	1
B.B.A. and LL.B	0	0	1	0	1	1

1.522 AGE AT ASSUMPTION OF OFFICE

Year	Age at Assumption of Office		
	Range	Arithmetic Mean	Mode
1963	32-63 years	47.2 years	49 years (freq. of 6)
1964	32-63 years	47.0 years	49 years (freq. of 7)
1965	29-63 years	46.4 years	49 years (freq. of 9)
1966	29-63 years	46.4 years	49 years (freq. of [illegible])
1967	29-63 years	44.1 years	41 years (freq. of 7)
1968	29-63 years	44.8 years	none discernible

1.523 PUBLIC OFFICES HELD PRIOR TO TAKING OFFICE

Office	Number of Attorneys General Having Held Position						
	1963	1964	1965	1966	1967	1968	1969
City or County Attorney	16	22	22	22	20	22	
Municipal Judge	2	2	2	2	2	2	
State Judge	3	4	5	4	4	4	
Federal Judge	0	0	1	1	1	1	
State Agency Head	3	2	3	3	3	3	
Governor	1	1	1	1	1	1	
State Senator	5	4	5	3	6	6	
State Representative	16	14	13	13	13	13	
Floor Leader	3	3	3	4	4	4	
Asst. or Dep. A.G.	14	11	13	13	15	13	
U.S. Attorney	6	5	4	5	6	6	
Assistant to Governor	1	0	1	2	2	1	
City Elected Official	2	1	1	1	2	2	
Lieutenant Governor	1	1	1	1	1	1	

1.524 TENURE OF OFFICE

Years of Tenure	Number of Attorneys General Holding Given Tenure						
	1963	1964	1965	1966	1967	1968	1969
One or less	16	7	4	4	0	0	
Two	14	10	15	5	14	4	
Three	5	7	3	15	3	12	
Four	5	10	10	5	15	4	
Five	5	6	5	4	1	13	
Six	2	4	3	4	1	4	
Seven	1	2	3	3	3	1	
Eight	1	0	1	2	1	3	
Nine	0	1	1	1	1	1	
Ten-Fourteen	3	1	3	1	3	3	
Fifteen-Twenty	1	1	1	1	2	2	

1.6 Relationship to the Legal Profession

The Attorney General's relationship to the bar in the states is not strongly defined, although he is potentially in a position to exercise leadership. In England and Canada, the Attorney General is the titular head of the bar. No such formal role devolves upon the office in America.

State Attorneys General have varying degrees of involvement with the bar. Some have formal duties in reviewing petitions for bar membership and in initiating proceedings for disbarment. Generally, however, the extent of their professional activities depends on their individual interests. Most take an active part in bar association meetings and some have published articles in the state bar journal. In some states, Attorney General's advisory opinions are published or briefed in the bar magazine. The Attorney General's role in recruiting lawyers for community service in times of emergency has been demonstrated. He may be active in projects of the American Bar Association, such as promoting that group's standards for the administration of justice[1]

1.61 The Attorney General and the Bar

Table 1.6, based on data submitted to C.O.A.G. by Attorneys General's offices, shows his relationship to the bar. Attorneys General serve on the state bar's board of delegates in Colorado, Connecticut *(ex-officio)* and Pennsylvania *(ex-officio)*. Minnesota's Attorney General serves on the bar association's unauthorized practice committee and Wisconsin's Attorney General does legal work for the state bar. The Attorney General of South Carolina serves on the committees on criminal law of both the integrated state bar and the private bar association.

C.O.A.G. inquiries to a few state bar associations showed that there is some interest in involving the Attorney General in bar activities. For instance, the director of the Missouri bar indicated that while the various Attorneys General in the past have been repeatedly urged to participate in bar activities, his participation often has been limited because of a busy schedule. However, the director commented that:

> Since Attorney General John Danforth has been in office, we have had a closer relationship than in the past. He has expressed a very definite interest in promoting projects in which The Missouri Bar is interested, and because of that we have had several private conversations with him that have been very helpful and very resourceful to us. We would like to expand and continue to involve the Attorney General's Office in Bar activities.[2]

The director of Maine's Bar Association pointed out that, though the relationship of the Attorney General and the bar was informal, it was nonetheless close. Five of Maine's Attorneys General have served as president of the bar association and one served as bar president while he was Attorney General. The bar association's director commented that relations between the association and the Attorney General were already very good:

> The Attorney General himself has been most helpful in many ways and so have his staff. They have contributed material to our Bar Bulletin and have never failed to give suggestions and advice when called upon.[3]

Former Attorneys General responding to C.O.A.G. questionnaires

1. See Section 1.75 of this study.

2. Letter from Wade L. Baker, Executive Director, the Missouri Bar, to Attorney General John B. Breckinridge, April 29, 1970.

3. Letter from Chauncey Robbins, Executive Director, Maine Bar Association, to Attorney General John B. Breckinridge, April 29, 1970.

Testimony of

JUDGE THOMAS B. STEWART

before the

SENATE STATE AFFAIRS COMMITTEE

HJR 7:
Constitutional Amendment
Election of the Attorney General

May 26, 1983

Members Present:

Senator Vic Fischer, Chairman
Senator Tim Kelly
Senator Bill Ray
Senator Pat Rodey
Senator Arliss Sturgulewski

TRANSCRIPT OF PROCEEDINGS

SENATOR FISCHER:

We next have Judge Tom Stewart with us. I might just, as a matter of introduction, say that Judge Stewart was a member of the Legislature in the 1950s, helped organize the Alaska Constitutional Convention, served as a secretary for the Convention, subsequently served in the State Senate, has been a very prominent judge, and is now before us. Tom?

JUDGE STEWART:

Thank you, Mr. Chairman. The question of an elected Attorney General, I think should be looked at from several different aspects of the issue. I would begin with a question of history, and it's kind of a truism that those who do not look at history are condemned to its errors. The history of this issue, just in Alaska, is that we had an elected Attorney General for forty-six years, from 1913 until 1959. The people who considered whether as a state we should continue to have an elected Attorney General included twenty-seven former members of the Legislature who had functioned under an elected Attorney General for many years in their combined experience, including an Attorney General who was elected, Ralph J. Rivers, and who came to the convention convinced that the Attorney General should be elected, and upon the basis of the debate there and the information that he learned from it, voted against the election of the Attorney General. The appointed Attorney General decision was ultimately made. Look to the history of other states, and I recall very clearly when a gentleman named Thomas

E. Dewey, who was the Governor of New York, came to Alaska in the late 1940s or the early 1950s, and met with political leaders in Alaska, and one specific word of advice that he made after his years of experience as Governor of New York and a leading prosecutor was: "Whatever you do, do not elect the Attorney General in your state."

Now, another aspect besides history, and we'll touch a little bit on the history of election of attorneys general in other states, but I think before doing so I would like to look a little bit at the nature of his functions. By nature, it's an error to label the Attorney General the attorney for the people. In fact he is not that. He is the attorney for the executive branch of the government. A governor is the Governor for the people, but not the Attorney General. A citizen cannot go up to his office and say, "I want an opinion." He will of necessity say to you: "we don't give opinions for the citizens; we give opinions for the executive branch and its agencies."

And I might pause a moment there; there's been an unfortunate history in Alaska that the Legislature has somehow looked to the opinions of the Attorney General as guidance for the meaning of the laws. In my judgment that's a serious error. The Legislature should have its own attorney. It should not look to the Attorney General.

Now, the Attorney General is like any other professional attorney. He is an attorney. His professional duty is to his client. His professional duty is to help his client realize his client's needs, not to make an independent judgment of what he thinks is right or wrong in

terms of his client's needs, but what his client thinks his needs are, and as a professional person, he should be looking to that.

Now, there's a mistaken view. Perhaps you might believe that somehow the Attorney General's opinions, which are published, are usually, hopefully, well considered, thought out, researched, and detailed--somehow have the quality of a judicial opinion. They do not. They are fundamentally different in nature, because they are not framed on an adversary basis. They are not based upon two sides genuinely, seriously opposed to one another, summoning every argument on the opposite sides. Rather they are framed like any other attorney's opinion, based on what he thinks his client's interests are. He's an advocate of that side, where a judge sits and listens to both sides. A judge, in effect, listens to cross examination. He listens to the argument, to the criticism of the argument, and to the counter criticism of the argument. The Attorney General has none of that in the framing of his opinions, and his opinions should <u>not</u> be viewed as if they had behind them the adversary process, which is fundamental to a judicial opinion or descision.

It's an error to think that the Attorney General can somehow satisfy pressing, immediate political concerns about a particular issue. What gives him the ability to try to read in what the newspapers are printing, or what he sees on TV, or what some constituents are saying, that that is the opinion of the majority of the people? He is not elected to determine what the policy of the government should be. I mean, he's not chosen to do that, whether elected or otherwise. He's chosen

to be the legal advisor to the executive branch, and he should not frame his opinions based on current political views. That's the Governor's choice. The Governor is the one that is chosen to fix the policy of the executive branch of the government, or it's the Legislature's choice in making the laws. Now, it would be a sorry state of affairs if the Attorney General framed his opinions, not on what his client desires to do to answer the public need, but what somehow is his reading of political opinion and then to color his professional legal opinion based on that kind of a view.

I have substantial personal experience. I served under an elected Attorney General for better than three years -- under two of them: under elected Attorney General Ralph J. Rivers and under elected Attorney General J. Gerold Williams. What the Attorney General decides cuts across the whole spectrum of the executive branch. He advises each and every department, and believe me, gentlemen and ladies, from what I saw in the operation of that office, his opinions, when he is elected, are colored by what he thinks that commissioner should do on a specific issue when he is going to be answering to the people in an election, rather than on what the policy of the executive branch will be in general.

If the Attorney General is elected you have built in conflict with the Governor. Wherever they have different personal views, there is going to be an expression of opinion and the Attorney General will determine what he thinks will help him politically, and not what will help the Governor on the other side; so that his opinions are going to

be

affected by his personal posture in the eyes of the electorate, rather than on what the right legal decision should be for the benefit of the executive branch. An elected Attorney General has a constant ambition to be the Governor, and is, therefore, necessarily in conflict with the elected Governor.

The problem of putting this issue to the vote of the people is that it's an issue that should not be viewed as an independent question. The question is not just whether the Attorney General should be elected. The question is what kind of an executive branch do you want? Now, you hear it commonly said that under our constitution we have a strong Governor. I suggest to you that that's a mistaken characterization. What you have is an accountable Governor, a Governor who can be held to account for the conduct of the entire executive branch. His strength is a function of the Legislature: what kind of laws the Legislature passes, what kind of limitations the Legislature puts on his authority. If you put an independent elected officer there, whose functions will cut across the entire executive branch, you can no longer hold the Governor accountable for what he does, because he may try to take action and the Attorney General can thwart it by his opinion.

Another reason why it should not go to the electorate is because there is an inadequate opportunity to debate this issue. You cannot put it in the perspective of what kind of an executive branch do you want. It's, as I say, an issue that should not

and cannot rationally be considered independently of that larger question of the nature of the executive branch, and if you put it in the form of the resolution that's before you today, that's not what will be before the voters to consider and to look at.

In my judgment, there is no sound argument in saying that forty-five states have elected attorneys general. If you get an elected Attorney General, believe me, you will not change it. You can never, as it were, take away an elected Attorney General from the electorate. I suggest to you that before you consider this serious question, that you should invite some governors from some other states where this system functions to testify to you what happens in their states. Invite the Governor of New York, invite the Governor of California, invite the Governor of Washington, and see what they say to you about how an independent person in that office frustrates the capacity of the executive branch to operate.

Now, let me turn back to history just a little bit. There was some mention made previously about the Attorney General of the United States, and in history the form of our state government is patterned from the federal government. I don't think you've ever heard a serious voice raised that the Attorney General of the United States should be elected. He is the advisor to the President and to the executive branch as such. He is the supervisor of the prosecutors for the nation. But I don't think you hear any responsible, reliable voice on the national scene say that somehow the government of the United States would be better if the Attorney General were elected. And the

history of that idea is two hundred years old.

Now, I'd just like to quote to you a few sentences from the Federalist Papers, number 70, written by Alexander Hamilton in 1783. It was addressed to the people of the State of New York at the time in the Federalist Papers: "There is an idea which is not without its advocates that a vigorous executive is inconsistent with the genius of republican government." Now, I would remind you, republican government is representative government. It is a government where you, the elected representatives, are asked to make wise decisions, decisions that the electorate cannot in its forum make, but which take the kind of consideration that you people can give it. "Enlightened well-wishers to this species of government must at least hope that the supposition is destitute of foundation." "Energy in the executive is a leading character in the definition of good government." Now, energy is the capacity to make a decision and carry it out. If you elect the Attorney General, you will deprive the Governor of that energy. His energy will go to fighting with the enemy within his own ranks. His energy will be directed to the intrafamily warfare within his cabinet generated by having an independent and conflicting voice there.

The situation is not unlike having two governments in one city, like the City of Anchorage and the Borough of Anchorage, the City of Juneau and the Borough of Juneau. If you look to the history of our local governments, most of our major communities have wisely consolidated those into one, so that the energy of the people that run them is not in fighting between people in their own community

but in addressing the principal problems. And I say to you that you will deprive the executive branch of its capacity for energy, for making effective decisions, if you saddle the Governor with an opponent within his system.

I don't want to prolong the discussion, but I'm utterly, totally convinced that to allow this to happen, and if you put it to the vote of the people it's likely to happen, because you can't adequately debate it in that forum, you can't put it in its perspective. If you allow it to happen, you will have forever damaged the quality of Alaskan government.

SENATOR FISCHER:

Tom, thank you very much for your solid statement. Are there any questions or comments? Senator Ray?

SENATOR RAY:

Judge Stewart, you brought up something that's been on my mind for a good length of time, and that is the problem with the Attorney General's opinions, and why the Legislature seeks his opinions and puts a great deal of credibility toward them. For the last, oh, at least ten years or more, it would appear to me that most attorneys general have thwarted the will of the Legislature. When we pass a bill that has not been appreciated by the Administration, or the Attorney General finds that the Administration doesn't want to administer, he writes a letter saying it's unconstitutional and, therefore, saying that he is sworn to uphold the laws of the State of Alaska, that he is advising the Administration not to administer it. This is contrary to the

Constitution of the State of Alaska. It says that he cannot do that. He must seek judicial counsel, and the judiciary makes the determination, and you have validated that for me today; and in our times of acquaintance and friendship, I want to thank you most for that statement you made right there. But how can we approach the Attorney General, or how do we overcome that? That's why we seek the opinions, and that's why a lot of times we're more or less bound by them, or we are asking them, rather than just to have our--we must come to a compromise position rather than just to have our bills go down the tube or not be administered.

JUDGE STEWART:

May I respond, Mr. Chairman?

SENATOR FISCHER:

Certainly, Tom.

JUDGE STEWART:

I think you're absolutely right, and it seems to me, as I began, you should look at history. How does it happen that the Attorney General has such a pervasive influence in the Alaskan government? Well, when we were a young territory, a small territory, the Attorney General was the only legal officer to look to. The Legislature had no staff, and there grew up an aura, somehow, of something sacrosanct about the Attorney General, and it should not be. He should be no more and no less than a legal advisor to the Governor. Now, the Governor might be a better lawyer than the Attorney General. You might very well have a Governor who's a lawyer and who's elected, who

knows more about the law, who does his research more carefully, is a better professional person than the Attorney General. He should be able to look at the Attorney General's opinion and say, "thank you, Mr. Attorney General, you're good and I want to keep you on, but I'm not going to pay any attention to that opinion because I don't think it's any good." He should be free to do that. The Legislature should never be bound by the Attorney General in any way. My advice, apart from this thing, is to hire yourself counsel: a counsel to the Senate and a counsel to the House; and rely on them for your legal opinions about the validity of your legislation, not the Attorney General, because his duty is elsewhere.

SENATOR RAY:

But, isn't there some way? You see, where we're thwarted a lot of times is that he will advise the Governor that in his opinion it's unconstitutional, and that, therefore, the Governor should not administer it. And a lot of times, by the time an individual legislator, who knows he's in the right, he does not have the wherewithal to bring court action.

JUDGE STEWART:

To take this to the court?

SENATOR RAY:

Yeah. And a lot of times when they do, by the time the two years that it would take to get before the courts, in a lot of instances, it's a moot question. The guy has lost. So you just more or less seek a compromise position with the Administration in order to resolve and

get a half a loaf, rather than to take the whole thing.

JUDGE STEWART:

There's nothing that I know of in the constitution that says the Governor has to follow the opinion of the Attorney General. Just because the Attorney General says it's unconstitutional does not make it so. I know of no way you can answer that question that you put, Senator Ray, without persuading the Governor in the particular instance that he should not follow the opinion of the Attorney General in that instance--or to go get another opinion if you can, to have the Attorney General take another look at it.

SENATOR RAY:

Well, if there is nothing that makes that opinion sacrosanct, that says the Governor can't support the legislation if he wants to ...

SENATOR RODEY:

Well, it might be in his best political interest to have the Attorney General say that and ...

JUDGE STEWART:

That may very well be.

SENATOR RAY:

In fact he might even seek that opinion out so that he can avoid doing what is politically distasteful to him.

JUDGE STEWART:

If that's the case, I think you have no alternative but to summon some resource to get yourself into court. I'd be glad to answer any other ...

SENATOR FISCHER:

Thank you, Tom.

SENATOR STURGULEWSKI:

Mr. Chairman, just a comment, that this is a most provocative discussion of how the Attorney General has evolved and just in the few years that I've been here, why, you see us going to [Legislative] Legal Services when we want one opinion, we go to the Attorney General for another. I think this is worthy of some exploration. It seems to me, one, you could, of course, go to court more often to challenge that opinion, but I almost think it would have to be, to bring change, an evolutionary kind of a thing where you would, in fact, either give the status to your current legal services or hire independent counsel that would be available for advice and you start going there as opposed to what we do now, which is more and more to go to the Attorney General for their opinion. But that is interesting and it would be interesting maybe to see a catalog of things that you might do to bring about the kind of change that will bring more balance there. We use the Attorney General as the final word in a lot of cases.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Because we're forced to. We're forced to reach a compromise position because otherwise he will say in his opinion it's unconstitutional and then the Governor will say, okay, and it's not administered; and then we're up to the wall unless we have the financial resources, the

backing of somebody to get it into court in a rapid fashion and then have the court act upon it.

SENATOR STURGULEWSKI:

Your asking what?

SENATOR RAY:

See, well, I even had the crazy idea one time of asking for advisory opinions from the Supreme Court or from the Superior Court - just advisory opinions on matters of great state interest and just have them give an opinion of whether it was constitutional or not, and they didn't want to do it.

JUDGE STEWART:

Mr. Chairman, may I just add one note, without extending your time, in response to Senator Sturgulewski's comments? I think it might be useful for you to look to the pattern of some other states. Now, the Legislative Affairs Agency is one thing that does its research, and it has its attorney that advises it as a staff. What I'm talking about is counsel to the Senate ...

SENATOR STURGULEWSKI:

That's right. We haven't done that.

JUDGE STEWART:

... and counsel to the House, and you will find that pattern in other states. I happen to know quite well an excellent counsel to the California State Senate, and the nature of the function of his office is very important in the success of legislation in that state, and to giving the - of necessity - the majority in the Senate that chooses him, legal

opinions.

SENATOR FISCHER:

Senator Ray?

SENATOR RAY:

Then, again, Tom, we've been, at various and odd times, in the Legislature, either one house or the other, or both acting in concert, have hired outside counsel in particular areas of interest or to answer specific questions, but then we're always criticized by the public or by those critics of the Legislature who declaim to the public that the Legislature spends its money, they have hired these people to do thus and such, and it gives the appearance that the Legislature is a bunch of spendthrifts when they have legal officers they could go to like the Attorney General which they in error believe is available to us to tell us what is constitutional and what isn't.

JUDGE STEWART:

I appreciate the opportunity to appear, Mr. Chairman.

SENATOR FISCHER:

I really appreciate your testifying.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

April 23, 1985

The Honorable Patrick Rodey
Chairman
Senate Judiciary Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Elected AG
SJR 9

Dear Senator Rodey:

I would like to comment on the merits of the question of whether or not we should elect the attorney general.

As you take up this issue, it is useful to consider how this proposed change will effect the citizens of our State in both the short and long term. I have lived and practiced law in our state for most of my adult life. I am absolutely convinced that the needs of all Alaskans are best served by having an appointed attorney general. Election of one cabinet level official makes no more sense than the election of some or all other commissioners.

Historically, the Attorney General has been an appointive, rather than elective, official. In England, the Attorney General was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the colony. The Attorney General of the United States still serve at the pleasure of the President with the advice and consent of the Senate. 1/

1/ Our research indicates that the Attorney General is popularly elected in forty-three states. The Attorney General is appointed by the Governor in five states (New Hampshire, Alaska, Hawaii, New Jersey and Wyoming), three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is a "constitutional officer" selected by the Legislature while Tennessee's Attorney General is selected every eight years by the Supreme Court of that state.

flexibility and discretion that is implied in an appointed attorney general. Anything less will inevitably drive a wedge between the Governor and the Department of Law to the detriment of the citizens of our state.

Thirdly, in addition to the practical problems caused by an elected attorney general, experience in other states with an elected attorney general suggests that the Governor's office will incur substantial costs with respect to the use of separate and additional counsel for the Governor. I am of the opinion that this use (and cost) depends on the relationship between the Governor and the elected Attorney General. In a situation where an elected Attorney General and Governor are cooperative, cordial and share a similar political philosophy, the need for additional Governor's counsel will be reduced. Regrettably, this is not always the situation. A 1976 study by the National Governors' Conference explored the role of Governors' legal advisors. The study, which was based primarily on a questionnaire to these counsel, found problems in this relationship:

> In many states, the relationship between the Governor and the Attorney General is not a smooth one. In addition to whatever political differences there may be between them, there are several operational areas of potential conflict. These include conflicts over the extent to which the legal talent employed by state agencies should report to the Attorney General or to the agencies; concern that the Governor cannot easily deal with the Attorney General because the Attorney General normally provides "yes-no" answers rather than discussions of the legal risk of various options; and the possible frictions that may normally occur in an attorney-client situation. 3/

While I cannot estimate the actual use and cost of additional counsel to oversee the elected Attorney General on behalf of the Governor, I am convinced there will be some extra cost incurred by the Governor's office to hire and use legal counsel even in the best of times. I sadly regret that the citizens of our state will be required to pay for this additional layer of legal bureaucracy.

3/ National Governors' Conference, Center for Policy Research and Analysis, LEGAL ADVICE FOR THE GOVERNOR, 7 (November, 1976).

I have a number of substantive points which weigh against the election of the attorney general. First, in Alaska, the people, through their legislators do participate in the selection of the attorney general by the confirmation process. In addition, the confirmation process allows the Legislature to examine the qualifications and integrity of the nominee.

Secondly, the governor, as the state's principal executive officer, needs to have a responsive and reliable Department of Law. I think good management requires an appointed attorney general, but more importantly common sense suggests that the attorney general selection be made by appointment. The delegates to our Constitutional Convention recognized over a quarter century ago that, in our vast state with its disparate interests and citizens, the administration of state government requires a strong governor. This still holds true today. The last thing our state needs is an elected attorney general who may have a personal or political agenda which varies from the position of the governor. The friction between the two elected administrative officials can lead to a less responsive state bureaucracy and a diffused accountability of the executive branch to the electorate.

I could relate anecdotes which illustrate this from other jurisdictions having elected attorneys general. Instead, I would rather provide a quotation from the National Municipal League:

> All authorities on executive organization agree with the position embraced by the Model State Constitution for more than 40 years that administrative power and responsibility should be concentrated in a single popularly elected chief executive. There is growing recognition that the governor, as the representative of all the people, should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state. 2/

Studies on administrative reorganization usually argue that fragmentation leads to irresponsibility, but that a single chief executive can be held accountable through the electoral system and, as a consequence, can make the administration more responsive. In my opinion, the Governor of Alaska needs the

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2/ National Municipal Leagues, MODEL STATE CONSTITUTION (6th ed.) 65-66 (1963).

Fourthly, in states where the attorney general is elected, the heads of executive departments often hire their own attorneys. In jurisdictions with elected attorneys general, there is often a proliferation of house counsel on the staff of major departments. Historically, such counsel have been employed by executive branch agencies to give department heads a "second" opinion in controversial matters in states having an elected attorney general. Such counsel usually do not have the authority to litigate, but they do provide legal advice to department heads. Without centralized legal service and advice, each agency will rely on advice from its own lawyers. Therefore, agencies will receive differing interpretations as they raise legal issues. This in turn will make consensus among different agencies on issues more difficult to achieve. The result is that public policy decisions in the executive branch will be delayed to the detriment of the public and the legislature. In addition, these house counsel frequently submit amicus briefs in litigation affecting their department's programs. It is not unusual in states with an elected attorney general to see four or five separate briefs filed in a single matter, representing the varying viewpoints of different agencies, in addition to the attorney general's brief. If nothing else, this needless duplication insures that the courts and the public will be confused about state policy on many issues.

In my estimation, the cost for such additional counsel in Alaska could easily exceed $1.0 million annually, within a few years. This cost is simply not warranted by any rational criteria and should be further questioned in light of diminishing revenues. We have many more basic needs in Alaska which command the state government's immediate attention. Surely we do not want a needless layer of extra lawyers embedded in state agencies.

In summary, it is my opinion that electing the Attorney General will split administrative responsibility and executive authority, diffuse the political accountability of the executive branch to the public, add more attorneys to state government, contribute to more intense bureaucratic infighting among agencies, delay the resolution of executive branch policy decisions, and create a higher rate of growth in the state operating budget.

Please call upon me at your earliest convenience if I can provide additional information on this matter.

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there amendments to Section 14? Mr. Barr.

BARR: Mr. President, I have an amendment to insert after Section 13. It is on the Secretary's desk.

PRESIDENT EGAN: Between Section 13 and Section 14?

BARR: Yes, it will be a new Section 14.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Page 6, line 16, after Section 13, insert a new Section 14, and renumber the following sections accordingly: "An Attorney General shall be elected at the same time and in the same manner as the Governor, and his term of office shall be four years. He shall be the chief law officer of the State, shall represent the State in all courts of law, and shall see that all laws are uniformly and adequately enforced throughout the State. He shall be legal advisor to the Legislature and all State officers, and shall perform such other duties as may be prescribed by law. He shall be responsible to the Governor and the Legislature for the faithful performance of his duties. The Attorney General shall receive for his services a compensation fixed by the Legislature which shall not be increased or diminished during his term of office. He shall devote his full time to his office and shall not receive any salary, fees or other compensation from any other source. In case of vacancy in the office of Attorney General for any cause, the Governor shall appoint his successor to complete the term of office with the consent of a majority of both Houses of the Legislature in joint session assembled, or, when not in session, a poll of the members may be taken by mail by the President of the Senate and Speaker of the House."

PRESIDENT EGAN: What is your pleasure, Mr. Barr?

BARR: I move the adoption of this amendment.

PRESIDENT EGAN: Mr. Barr moves the adoption of the amendment. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. The amendment is open for discussion. Mr. Barr.

BARR: Mr. President, as this is rather a long amendment --

PRESIDENT EGAN: The Chair would like to make an announcement at this time, before you proceed, Mr. Barr. The News Miner just called and Guy Rivers, brother of Vic and Ralph, was found alive and safe about 30 minutes ago. (Applause) He has been picked up and is now on his way back to Fairbanks. Mr. Barr.

BARR: I have had placed on all the delegates' desks a mimeographed copy of the text of this amendment. It is not the complete amendment showing the lines and paragraph, it is merely the text. It provides for the election of the attorney general, that is the gist of it. He shall be elected at the same time and manner as the governor. He shall be legal adviser to the legislature and all state officers, and shall perform such other duties as may be prescribed by law. It outlines his duties and it provides for his replacement in case there is a vacancy. Now, in presenting this amendment, I do not go against the thought of the Executive Committee in that we should have a strong executive. Some people will think so. I went along with their committee report and I still do not disagree with it; however, the reason I decided finally to put this amendment in was the fact that I met innumerable people, speaking to them privately, who thought that the attorney general should be elected. In fact, they stated it in broader terms, they said they would like to elect more officials than the state governor. None of them stated that they wanted to elect as many as we have now, that they wanted to reduce the governor's power, but they thought they should elect enough so that they felt they had a hand in the government themselves. I felt that if another official should be elected, it should be the attorney general. Why the attorney general? Because all these other department heads are there expressly to carry out the governor's program and should agree with him in every detail on his policy. That makes up a good working team. The attorney general also should work with the governor, he is the governor's legal counsel and the legislature's legal counsel and also counsel for all the department heads, but he has one other duty that does not quite conform to the usual idea of a department head's duty under administration and that is, he is called upon to interpret the law at times. That is a semijudiciary function, I would call it, although it's not final. It is a temporary decision and may be taken into the courts. In interpreting the law, he should be impartial. Many times, of course, the governor might ask him to interpret the law to be sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

And even if he were entirely honest and tried to render an impartial decision, I'm afraid his conscience would hurt him a little bit because he was obligated to the governor and went against the governor's wishes, so to remove him from that embarrassing position, I think that he should be elected. Now I grant you in electing any man we cannot be sure that we will get a good man, and on the other hand, by appointment we cannot insure that we will get a good man, but I believe that if we are going to elect another official because the people want it, then it should be the attorney general.

PRESIDENT EGAN: Any further discussion? Mr. Marston.

MARSTON: Mr. President, if my recollection is right, in the past 14 years that I have definite recollection of, there have been only two attorney generals and the reason is that they just can't get attorneys to run for that job. I'd want to know that there are attorneys that will step up and lend themselves to be elected to that job before we pass on this. I have no argument with the mover of this amendment, Mr. Barr, except that is information that I would like to have. Maybe we have some lawyers here that could enlighten me on that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I think I could answer that. All the lawyers that favor the amendment will probably stand up, and those who don't will sit down. (Laughter)

PRESIDENT EGAN: The Convention will come to order. Is there further discussion of the proposed amendment? Mr. Nolan.

NOLAN: Mr. President, at a meeting that I had, I think there were 12 people there on an hour and a half's notice, that was the one thing they were unanimous on. They wanted the attorney general elected by the people. They seem to think it was the one independent arm that they would have, and for that reason they were unanimous that the attorney general should be elected, and therefore I think I will support Mr. Barr's amendment.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Mr. President, I voted against the governor and secretary of state as co-runners on the belief that we had merely one elective office in the executive arm and that would suffice, because my other voting had been predicated, and other proposals had been predicated, on that belief we were going to have a strong executive. This is merely the introduction to other offices. I notice we have a Delegate Proposal No. 45 submitted by Mr. Barr, and we have a Delegate Proposal No. 44 also,

providing for the election of a commissioner of labor. If we yield ground in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. I am violently opposed to the election of the attorney general. I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client. It is an attorney-client relationship and the relationship has to be based on faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I be allowed to close?

PRESIDENT EGAN: If there is no other person who wishes to be heard. Mr. Stewart.

STEWART: Mr. President, may I ask Mr. McLaughlin a question?

PRESIDENT EGAN: You may, Mr. Stewart.

STEWART: Is it your idea that the attorney general, as such, he is or should act as the counsel for the legislature, as well as for the executive?

McLAUGHLIN: He should, in substance, act as counsel for the legislature. In many respects, you also have the unusual circumstance where the attorney general is of one party and the legislature is predominantly of another party.

STEWART: He may have to give decisions in one case that might favor the executive and in another case might favor the legislature?

McLAUGHLIN: That's right.

STEWART: I think that is an unwholesome situation, and should be corrected by having the attorney general purely and simply the adviser for the executive.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, this has developed to the point where I want to say a few words. I wasn't going to, but when I was attorney general, that office was legislative counsel for the legislature, advised the members of the legislature, advised the various administrative departments under the governor, and advised the governor, and wrote legal opinions interpreting the law. Since that time the legislature has created a Legislative Council, that Legislative Council has a political scientist in charge, Jack McKay. It could very well have a lawyer and is authorized to engage any legal services that may be required. The legislature has full power to hire all the legal assistance it needs during the sessions so that I believe that Mr. Stewart's thought is well taken, that the attorney general will be the attorney for the executive arm of the government and that if we have the governor appoint an attorney general, he is not going to be the adviser to the legislature nor the drafter of legislative bills. Now, he may draft proposed legislation for the administrative departments. If the department of health wants a bill, the governor will tell the attorney general to get out a good bill or the commissioner of health, or as the case may be. They'll fall back on the attorney general for some bill drafting

for the governmental departments, but the legislature from now on and under this setup, is not going to have the attorney general doing its bill drafting. It's going to have its own legal counsel. The present Attorney General, because of the press of business, gave up being legislative counsel for the legislature three years ago and told them they were too busy and were just looking after the executive department, and that they were to figure out how to get their own bills drafted. Two years ago that situation got so acute that the Legislative Council was created and it serves a very useful need, but I think that Mr. McLaughlin actually emphasized the wrong answer when he said that the attorney general would be the counsel for the legislature as well as for the executive arm, because under the present development with Legislative Council, he will be the attorney for the executive branch and the legislature can take care of itself. I might also say that I wrestled with this, I started out advocating that the attorney general be elected, but I wrestled with it, I told Mr. Barr that I felt the way he did four or five days ago. Because of my doubts though, I have talked to many people, they have said if you are going to let the governor's administration be held responsible for the conduct of that administration, you have got to at least give the governor an attorney of his own choice. Under this setup he might get an attorney of the opposite political faith. He might get one of his own party who is either inadequate or who is hostile to him, or who doesn't see eye-to-eye with him. In either case, the governor could say at the end of his term, if things haven't gone well, "We had a good program but that attorney general you foisted upon me wrecked our program." There again, you have got passing the buck as to who was to blame because things didn't go well. Now then, if we want to be sure that the strong executive who is going to have the responsibility of carrying out a successful administration is going to get the blame if he doesn't have a successful administration, let us not give him any outs. Let's not take him off the hook by giving him an attorney general that he can put the blame on.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I don't intend being an applicant for the position of attorney general either by appointment or election, but I don't quite see Delegate Marston's point that there are no attorneys in the Territory who are willing to run to be elected attorney general. I can't see how there would be any attorneys who would be willing to accept the appointment. I support Mr. Barr's position in this matter. I, too, am in favor of a strong executive, but I don't think that the mere fact that because under the appointive system of governorships that the governor virtually has no powers, that we should let that carry

us too far away. I think that it is a good thing for the people, to have their own elected attorney general who can check the legislation which the governor proposes to introduce and have introduced, and for that reason I am going to vote for this amendment.

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: I was also going to answer Colonel Marston much as Mr. Robertson did. If lawyers aren't available, they aren't available period. Mr. Rivers was talking about an entirely different thing. He mentioned our present Legislative Council. There is not a lawyer in charge. They do draft bills for the legislature. They have taken over a duty which the attorney general formerly did, that is as it should be. There is a lot of detailed work there, but it isn't legal work. If the legislature wants to ask a legal opinion, they will not go to our political science experts, they will go to the attorney general. Now he also stated that if an attorney general of the opposite political party were elected, the governor could pass the buck and say, "Well, you people see what you saddled me with here. I couldn't do anything. He wouldn't let me." Well, if there was an attorney general of the opposite political party there, he would make the governor toe the line pretty well as far as the law was concerned. All the governor could say to the people is, "You see that attorney general, he made me conform with the law." That's all this is designed to do. It isn't supposed to restrict his actions otherwise, just to conform with the law. Now, as Mr. McLaughlin said, because he was the legal counsel for the governor period, that this would not accomplish any particular purpose. It will accomplish several purposes. It is up to you people to decide how important they are. It might provide a little brake on the governor if he wants to go too far. If he wants to over-step the law just a little bit, but the principal purpose it has, the principal objective it will achieve is that it will allow the people to have more hand in the government and that is what we want.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I request a roll call on this vote and will raise my hand to indicate that request. Under these rules, 10 people have to --

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Barr be adopted by the Convention?" The Chief Clerk will call the roll.

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

Yeas: 12 - Barr, Collins, H. Fischer, Laws, McNealy, Metcalf, Nolan, Robertson, Smith, Sweeney, Taylor, Walsh.

Nays: 40 - Armstrong, Awes, Boswell, Buckalew, Cooper, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, King, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Stewart, Sundborg, White, Mr. President.

Absent: 3 - Coghill, VanderLeest, Wien.)

CHIEF CLERK: 12 yeas, 40 nays, and 3 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Mr. Barr.

BARR: Mr. President, I had another amendment which I had intended introducing providing for the election of a commissioner of labor. I would just like to state that the reason for that was that without destroying the powers of a strong executive, I thought the people would like to have a number of officials elected someplace between the number of two and four, but I can see that this body does not believe that that should be done.

McCUTCHEON: Point of order, Mr. President.

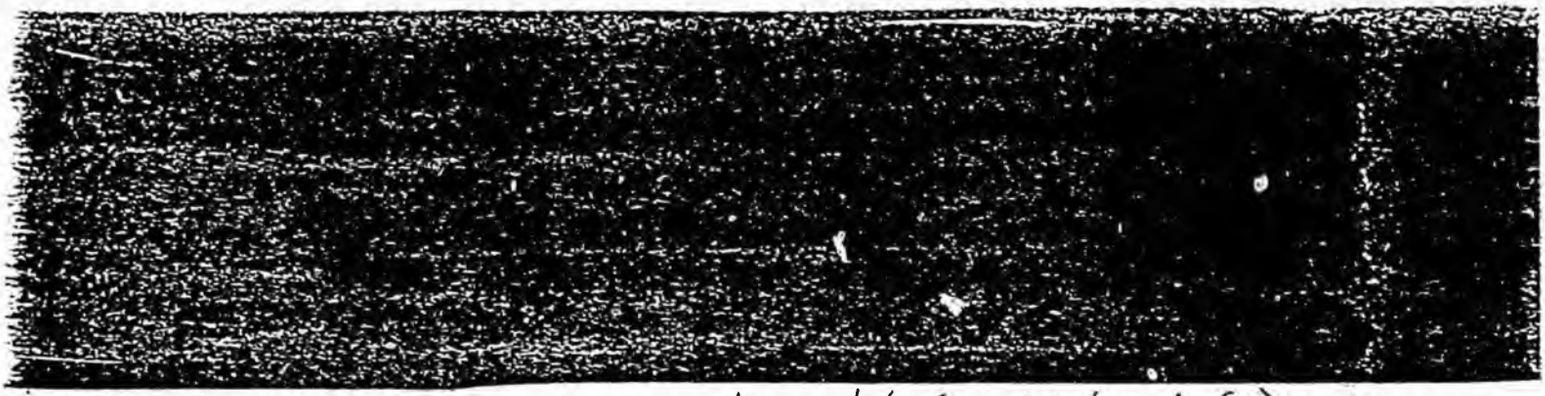
PRESIDENT EGAN: Your point of order, Mr. McCutcheon.

McCUTCHEON: Isn't Mr. Barr speaking to a matter of personal privilege?

PRESIDENT EGAN: Do you ask to speak on a matter of personal privilege, Mr. Barr?

BARR: Yes, I will, if the tape is left on.

HURLEY: I'll move that Mr. Barr be allowed to speak on a matter of personal privilege.



Fischer, Vic dK Constitutional Convention
University of AK Press, 1975

ITUTIONAL CONVENTION

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subsequent proposal by Seaborn Buckalew of Anchorage to strike the secretary of state position was narrowly approved on a twenty-six to twenty-five vote.[67] While this action eliminated the secretary of state problem, most delegates were not comfortable with the elimination of an elected successor to the governor.

The delegates reconsidered the problems on the following day, and after much additional debate finally agreed to include in the article a secretary of state who would be chosen separately in the primary election by the voters of each party and then paired with the party's candidate for governor in the general election. Matching the top vote-getter for governor and secretary within each party would ensure that the selected secretary was popularly chosen and of the same political party as the governor.[68]

As approved under the constitution, the secretary of state succeeds to the governorship in case of a vacancy and serves as acting governor when the governor is temporarily absent from office. Further provision for succession in the event that the secretary of state is unable to succeed to the office or to act as governor was to be made by law. The convention preferred this formula to the initial committee proposal that when the secretary of state is unable to act, the president of the senate and the speaker of the house of representatives shall, in succession, act as governor until the disability is removed.

Attorney General

There was also considerable debate about whether the attorney general should be elected. A problem in this debate was the lack of agreement among delegates about the functions of an attorney general. Some viewed his role as strictly that of legal adviser to the governor and other officers in the executive branch. Others believed he performed similar functions with respect to the legislature. Yet others felt that because the attorney general prosecutes cases on behalf of the state, he should be independent of those, including the governor. Responsible for administering the state's police functions. And some argued that one purpose of the attorney general was to keep the executive honest.

As alternative to a gubernatorially appointed attorney general as proposed by the committee, it was proposed to nominate attorney general candidates in a method similar to that provided in the judicial article for judges. Others suggested the attorney general be elected.

[67] *Ibid.*, p. 2093
[68] *Ibid.*, pp. 2009-10, 2127-45.

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