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6900 HOUSE JUDICIARY

issued by him incapable of being recalled or invalidated by himself, when the appointing power is located elsewhere, and when his act, in issuing the commission, is not discretionary with him, but is only the performance of a ministerial duty."

And where, in pursuance of an appointment regularly and validly made by the common council of a city, a person qualified for an office by giving bond and taking the oath, although the appointment had not been signed by the mayor, it has been held that the appointment was final and not subject to rescission by the council, where the duty of the mayor in respect to signing appointments was purely ministerial. People ex rel. Mosher v. Stowell (1879) 9 Abb. N. C. (N. Y.) 456.

With respect to the necessity of a commission or certificate to complete an appointment, a distinction has been noted between commission or certificate issued after an election of an officer by the people and commission or certificate issued after an appointment of an officer by an executive or other board. In the former case, it is said that the right of a person to the office arises from the vote of the people, and does not depend upon the issuance of a commission; while, in the latter case, the issuance of the commission is an essential part of the appointment. Conger v. Gilmer (1867) 32 Cal. 76. It was said in this case, with respect to the appointment of officers by boards consisting of several members, that the mere fact that it is necessary to take a vote in order to arrive at some decision with respect to the appointment does not make the appointment an "election" not requiring a commission or certificate for its consummation, but that the action of the board in such a case is as much an "appointment" as the action of a governor or other single executive in similar cases.

For the right of a governor to rescind an appointment made during a recess of the legislature where a commission has issued, the appointment being subject to confirmation by the senate, see People ex rel. Wetherbee v. Cazneau (1862) 20 Cal. 504, discussed supra, subd. III. b.

d. Qualification; approval of bond, etc.

In Michigan, where a person appointed by the mayor to the office of city counselor accepts the office and takes the oath and files a bond with the common council as required by law, which bond appears to be sufficient and entirely regular, it has been held that the mayor is without power to revoke the appointment prior to the approval of the bond. Speed v. Detroit (1893) 97 Mich. 198, 56 N. W. 570 (for further proceedings, see Speed v. Detroit (1894) 98 Mich. 360, 57 N. W. 406, 22 L.R.A. 842, 39 Am. St. Rep. 555), and Atty. Gen. v. Corliss (1894) 98 Mich. 372, 57 N. W. 410.

And in Atty. Gen. v. Love (1877) 39 N. J. L. 476, 23 Am. Rep. 284 (affirming (1876) 39 N. J. L. 14), where, upon being appointed to the office of city collector a few days before the expiration of the term of office of the majority on the appointive board, the appointee was inducted into office and entered upon the duties thereof, it was held that this appointment was final, and not subject to rescission by the incoming board, although the board had not submitted the officer's bond to the mayor for his approval or veto. The view was expressed that the failure of the board to perfect the appointment by submitting the bond to the mayor, being an act entirely outside the control of the appointee, should not be held to affect his rights.

But where three of the judges of a court of common pleas signed and delivered a certificate of appointment designating a certain person as clerk of that court, directing the acting clerk to enter such appointment on the minutes of the court, and the court then adjourned until the following Monday, and, dissent being expressed by two of the judges to the entry of the appointment on the minutes of the court on the following Monday, the clerk refused to enter the appointment, and the same judges subsequently refused to approve of the bond offered by the appointee, it has been held that the appointment was never completed and hence was

subject to rescission by the court. State ex rel. Goodin v. Este (1835) 7 Ohio, pt. 1, p. 134. It was the court's opinion in this case that, if the appointment had been entered on the minutes of the court and the appointee had qualified by taking the oath of office and giving bond, and the bond had been approved by the court, the court then could not have interfered with the office; but that, the approval of the bond being an essential part of the appointment, the appointment was subject to rescission at any time until the bond was approved.

It appears from the statement of facts in the reported case (THORNE v. SQUIER (Mich.) ante, 126), and in the companion case of North v. Wagner (1933) — Mich. —, 249 N. W. 494, that the appointees in those cases had qualified and entered upon the discharge of the duties of the office, although this fact was not stressed by the court.

For the right to rescind the confirmation of an appointment after the appointee has filed his bond and qualified for the office, see the following cases discussed in subd. VI. b, c, infra: United States v. Smith (1932) 286 U. S. 6, 76 L. ed. 954, 52 S. Ct. 475; State ex rel. Whitney v. Van Buskirk (1878) 40 N. J. L. 463, and Re Fitzgerald (1903) 82 N. Y. Supp. 811 (affirmed in (1903) 88 App. Div. 434, 84 N. Y. Supp. 1125).

And for the right to reconsider an election by ballot at a later meeting, the election having been deferred until the next meeting, where the person receiving the majority of votes on the ballot taken at the first meeting files his oath and qualifies for the office prior to the later meeting, see State ex rel. Bardick v. Tyrrell (1914) 158 Wis. 425, 149 N. W. 230, Ann. Cas. 1916E, 270, discussed supra, subd. IV. c, 1.

As to whether an appointment made at a morning session may be reconsidered at the afternoon session, where the appointee executes a bond and takes the oath of office during the noon recess, see State ex rel. Pierce v. Hardin (1931) 163 Tenn. 471, 43 S. W. (2d) 924, supra, subd. IV. c, 1.

c. Miscellaneous

In a Kentucky case, in holding ineffectual and invalid an attempt made by a board of education about two months after the appointment of a county superintendent, but prior to the beginning of the superintendent's term, to rescind the appointment, the court said: "What remains to be done to complete the occupation of the office must be done by the appointee, and not by the appointing power. The office then has a duly selected person authorized to assume it, and, in the absence of some new circumstances such as failure to qualify or refusal to accept the office, there is no power to put another in the position. Board of Education v. McChesney (1930) 235 Ky. 692, 32 S. W. (2d) 26.

In Tuck v. Victoria (1892) 2 B. C. 179, where, upon a ballot being taken by a city council for the purpose of electing a city officer, it appeared that one of the candidates had received a clear majority and the result of the vote was announced by the clerk, it was held that the appointment was final and complete, and not subject to rescission by the council at a later meeting, although the presiding officer had never declared such person elected, the minutes of the meeting had never been signed as required by law, no sealed instrument of appointment had been executed, the appointee had never given any bond or other security and had not filed the declaration as to faithful performance of the duties of the office as required by law, and there had never been any formal installation of the appointee into office.

The fact that, in order to complete an election by the people, it is necessary that there should be a return of the result, does not make a return or something analogous to it a constituent element of an appointment, so as to permit a rescission at any time before the return or other equivalent act is effected. Ibid.

In Weir v. State (1884) 96 Ind. 311, where a board of county commissioners acting under the authority of a statute providing that such board should annually elect a secretary for

the county board of health elected a person to this office and entered an order declaring such election on its records, it was held that the board could not, on the day following such election, rescind its action and elect another to the office.

See State ex rel. Childs v. Wadhams (1896) 64 Minn. 318, 67 N. W. 64, discussed infra, subd. VI. c, in which the common council of a city was held to be without power to reconsider its confirmation of an appointment where the appointment had been promulgated and publicly proclaimed.

VI. Right to reconsider confirmation of appointment.

a. In general.

The present division of the annotation supersedes an annotation in 2 A.L.R. 1657.

Some question has been raised as to whether greater latitude should not be allowed a collective body in the matter of reconsideration where it seeks to rescind a confirmation of an appointment than where it seeks to rescind an appointment made directly by it.

Thus, in distinguishing between the function of appointing to office and the function of confirming appointments, the Illinois court has said: "It is insisted that the council has no power to reconsider an election of officers by it; that the confirmation of an appointment is virtually an election to office; that the same rule applies to confirmations as to elections, and that the weight of judicial authority denies to deliberative assemblies the power to reconsider the election of an officer which it was authorized to make. This is not, however, the case of an election,—a choice between two or more candidates. The council does not, in any sense, choose the appointee. The question before it is the approval of an executive act of the mayor. Its action is discretionary and deliberative." People ex rel. MacMahon v. Davis (1918) 284 Ill. 439, 120 N. E. 326, 2 A.L.R. 1650.

And the view has been expressed, based upon the alleged difference in nature between the act of nomination and the act of confirmation, it being argued that the former is the exercise of a purely executive function, while the latter is more in the nature of a legislative act; that cases upholding the right to rescind the confirmation of an appointment are not authority in support of the right to rescind an appointment directly made. Dissenting opinion of Wiest, J., in North v. Wagner (1933) — Mich. —, 249 N. W. 494.

From a review of the cases, however, it would seem that, as a general rule, the confirmation of an appointment is just as binding upon the body making it as a direct appointment. See cases cited in the next two subdivisions of the annotation.

b. Confirmation by legislature.

The proceedings of a legislature being almost always governed by fixed rules of order, among which are usually found rules for the reconsideration of matters previously voted on, the question of the right of the legislature to rescind the confirmation of an appointment is dependent largely upon the construction and effect to be given to such rules.

For the right to attack the validity of rules of order with respect to reconsideration, see the annotation in 76 L. ed. U. S. 967.

The view has been expressed that the constitutional right of the senate to adopt rules with respect to the reconsideration of resolutions passed by it extends only to cases where the senate is acting in a legislative capacity, and does not embrace cases, such as the confirmation of appointments, where the senate acts in an executive capacity. Dissenting opinion of Ethridge in Witherspoon v. State (1925) 138 Miss. 310, 103 So. 134. But this view was definitely rejected by the majority of the court in that case.

Likewise, in Atty. Gen. v. Oakman (1901) 126 Mich. 717, 86 N. W. 151, in holding that a state senate, acting under a rule adopted by it permitting motion for reconsideration to be made on the same day the vote is taken or within the next two days of actual session of the senate thereafter, might

rescind the confirmation of an appointment at the same session before any action based upon the confirmation had been taken, the court rejected the contention that, in consenting to an appointment by the governor, the legislature is performing an executive rather than a legislative duty, and that the rules governing the acts of the legislature in its legislative capacity, including the rule with respect to reconsideration, have no application to such a case.

But where notice of the confirmation has been sent to the executive, and he has completed the appointment, and the appointee has qualified and entered upon the discharge of the duties of the office, it has been held that the confirmation cannot be reconsidered, even though the rules of the senate provide for reconsideration.

Thus, in United States v. Smith (1932) 286 U. S. 6, 76 L. ed. 954, 52 S. Ct. 475, where, after consenting to a nomination made by the President, the Senate ordered that the resolution and confirmation should be forwarded to the President, in accordance with which order the secretary of the Senate notified the President of the confirmation, the communication being delivered by the official messenger of the Senate, and, upon receiving the notice of confirmation, the President signed and delivered a commission to the officer, and the officer immediately took the oath of office and entered upon the discharge of the duties of the office, but, at its next session, the Senate voted to reconsider the confirmation, and, after the President had refused the request of the Senate to return the resolution of confirmation to it upon the ground that he had already issued a commission, the Senate placed the nomination on its calendar and then proceeded to reject it, acting under the rules of the Senate with respect to reconsideration, which provide that a motion for reconsideration may be made on either of the next two days of actual executive session of the Senate, "but if a notification of the confirmation or rejection of a nomination shall have been sent to the President before the expiration of the time within which a motion to reconsider may be made, the motion to reconsider shall be accompanied by a motion to request the President to return such notification to the Senate," and that "nominations confirmed or rejected by the Senate shall not be returned by the secretary to the President until the expiration of the time limited for making the motion to reconsider the same, or while a motion to reconsider is pending, unless otherwise ordered by the Senate," it was held that the Senate had no power to reconsider the confirmation. In reaching this result, the court relies to a large extent upon the history of the rules of the Senate with respect to reconsideration and the practical construction put upon those rules by the Senate and the Executive. It is also pointed out that to permit the Senate to reconsider the confirmation after it had notified the President would render practically nugatory the proviso, added to the rule directing the secretary not to notify the President until the expiration of the time limited for making a motion to reconsider, that such notification should not be given "unless otherwise ordered by the Senate." In support of the result reached by it, the court said: "It is essential to the orderly conduct of public business that formality be observed in the relations between different branches of the government charged with concurrent duties; and that each branch be able to rely upon definite and formal notice of action by another. The construction urged by the Senate would prevent the President from proceeding in any case upon notification of advice and consent, without first determining through unofficial channels whether the resolution had been forwarded in compliance with an order of immediate notification or by the secretary in the ordinary course of business; for the resolution itself bears only the date of its adoption. If the President determined that the resolution had been sent within the time limited for making a motion to reconsider, he would have then to inform himself when that period ex-

pired. If the motion were made, he would be put upon notice of it by receipt of a request to return the resolution. But under the view urged by the Senate, that reconsideration may proceed even though the resolution be not returned, he would receive no formal advice as to the disposition of the motion, save in the case of a final vote of rejection or confirmation. The uncertainty and confusion which would be engendered by such a construction repel its adoption."

But a different result has been reached where no notice of the confirmation was sent to the executive. Witherspoon v. State (1925) 133 Miss. 310, 103 So. 134. In that case a state senate, upon receiving a nomination made by the governor to the office of levee commissioner, confirmed the appointment at an executive session, but no order was made directing notice to be sent to the governor of the confirmation, and at a subsequent session of the senate and within the time permitted by the rules of the senate for reconsideration, which rules were substantially the same as the rules governing the Senate of the United States and involved in the case of United States v. Smith (U. S.) supra, the governor making the appointment having in the meantime been succeeded by another in the governor's office, the senate voted to reconsider the confirmation and consented to the withdrawal of the appointee's name by the new governor. It was held that, the senate having acted in entire accordance with its rules, which under the Constitution of the state it had the power to adopt, the rescission of the confirmation was proper. This result is expressed by the court as follows: "Of course, . . . when the senate confirms an appointment made by the governor, it is without power thereafter to revoke the confirmation, but under the rules of the senate which the Constitution authorized it to adopt, no vote on the confirmation of an appointment to office is final, and consequently there is no such confirmation until a motion to reconsider an affirmative vote thereon has been disposed of adversely, or the time for the making thereof has expired without such a motion being made."

c. Confirmation by local body.

In the case of the confirmation of appointments by local bodies, such as the confirmation by a city council of an appointment by a mayor, it is generally held that, after the will of the confirming body has once been expressed and the appointment is finally completed, the confirmation is not subject to reconsideration.

Thus, in State ex rel. Childs v. Wadhams (1896) 64 Minn. 318, 67 N. W. 64, where an appointment by a mayor to the office of city assessor was confirmed by the common council, the appointment thereafter being duly entered of record and promulgated as required by law, but the common council, upon a motion being made by one of its members at a subsequent meeting to reconsider the vote of confirmation, upon the ground that such member had voted for confirmation by mistake, rescinded its former vote of confirmation and rejected the appointee, it was held that, the appointing power having been fully exercised by the confirmation and nothing further being necessary to complete the appointment, the attempted rescission of the confirmation was unauthorized and of no effect.

And where an appointment made by a mayor to fill a vacancy in the office of city clerk has been confirmed by the common council, and the appointee has filed his oath and bond and performed every act required of him to indicate his acceptance of the office, it has been held that it is not within the power of the council to rescind its former action and reject the nomination at a subsequent meeting. Re Fitzgerald (1903) 82 N. Y. Supp. 811 (affirmed in (1903) 88 App. Div. 434, 84 N. Y. Supp. 1125). It was the court's view in this case that the appointment could not be revoked even by the mayor and council acting together.

So, in State ex rel. Whitney v. Van Buskirk (1878) 40 N. J. L. 463, where, upon the tender of the resignation of

the chief of police of a city and the nomination by the mayor of a person to fill the vacancy, the board of councilmen accepted the resignation and confirmed the nomination, but at a subsequent meeting rescinded their vote, refusing to accept the resignation and withdrawing the confirmation of the nomination, but the appointee, with the consent of the mayor, took the oath of office and entered upon the duties of the office, it was held that the act of the councilmen in attempting to rescind the vote taken by them at their first meeting was unauthorized and of no effect. It was said with respect to the right of the councilmen to withdraw their acceptance of the resignation, that, the acceptance of the resignation being a matter to be disposed of by the person or body in whom was vested the power of appointment, no action could be taken by the councilmen with respect to it without the consent of the mayor, part of the appointive power being vested in him; and it is said in a later part of the opinion, that the same considerations apply to the attempted reconsideration of the nomination.

But where the rules of order governing the proceedings of the local body provide for reconsideration, a different result is reached.

Thus, in People ex rel. MacMahon v. Davis (1918) 284 Ill. 439, 120 N. E. 326, 2 A.L.R. 1650, where a motion was made immediately after the confirmation of certain appointments by a city council to reconsider such confirmation, and it was voted to lay such motion on the table, and the question of reconsideration was taken up at the next regular meeting of the council and the vote of confirmation rescinded, the action of the council being in accordance with the rules adopted by it providing that a vote or question might be reconsidered at any time during the same meeting or at the first regular meeting held thereafter, it was held that the rescission of the confirmation was proper. In reaching this result, the court followed Atty. Gen. v. Oakman (1901) 126 Mich. 717, 86 S. W. 151, 86 Am. St. Rep. 574, supra. The act of the appointees in assuming the offices on the day following their appointment was held not to give them any additional right with respect to the offices, in view of the fact that the motion to reconsider the vote of confirmation was pending before the council at the time they took over the offices. With respect to the applicability of rules of order to the confirmation of appointments, the court said: "No good reason is apparent why the council may not establish rules in such cases for the government of its own procedure in arriving at its final judgment, as well as in other cases. Orderly procedure requires some rules for the proper despatch of business and deliberation in its conduct. The confirmation of executive appointments should be deliberately considered, and the rules applicable to ordinary questions to secure such deliberation may well be applied."

It is obvious, of course, that, where the office is not for any fixed or definite term but is dependent upon public necessity and economic conditions, as in the case of deputies, consent to the appointment may be withdrawn at any time. Griggs v. Weston County (1895) 5 Wyo. 274, 40 Pac. 304.

See the quotation given as dictum and stated to be well-settled law, in Schulte v. Jefferson (1925) 221 Mo. App. 369, 273 S. W. 170, to the effect that, "where the appointment is made as the result of a nomination by one authority and confirmation by another, the appointment is not complete until the action of all bodies concerned has been had, and the body which has been intrusted with the power of confirming appointments may reconsider its action before any action based upon its first decision has been taken."

P. M. Dwyer.

Quasi in rem. Type of jurisdiction of a court based on a person's interest in property within the jurisdiction of the court. There must be a connection involving minimum contact between the property and the subject matter of the action for a state to exercise quasi in rem jurisdiction. Shaffer v. Heitner, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 683. "Quasi in rem proceedings" is generally defined as affecting only interest of particular persons in specific property and is distinguished from proceedings in rem which determine interests in specific property as against the whole world. Avery v. Bender, 124 Vt. 309, 204 A.2d 314, 317. See also **Jurisdiction.**

Quasi judicial. A term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature.

Quasi judicial act. A judicial act performed by one not a judge. State Tax Commission of Utah v. Katsis, 90 Utah 406, 62 P.2d 120, 123.

Quasi-traditio /kwéysay trədísh(iy)ow/. Lat. In civil law, a term used to designate that a person is in the use of the property of another, which the latter suffers and does not oppose. It also signifies the act by which the right of property is ceded in a thing to a person who is in possession of it; as, if I loan a boat to Paul, and deliver it to him, and afterwards I sell him the boat, it is not requisite that he should deliver the boat to me to be again delivered to him: there is a *quasi*-tradition or delivery.

Quater cousin. See **Cousin.**

Quatuor pedibus currit /kwóduwor pédəbəs kárət/. Lat. It runs upon four feet; it runs upon all fours. See **All-fours.**

Quean /kwíyn/. A worthless woman; a strumpet. Obsolete.

Queen. A woman who possesses the sovereignty and royal power in a country under a monarchical form of government. The wife of a king.

Queen regnant. In English law, a queen who holds the crown in her own right; as the first Queen Mary, Queen Elizabeth, Queen Anne, and Queen Victoria.

For the titles and descriptions of various officers in the English legal system, called "Queen's Advocate," "Queen's Coroner," "Queen's Counsel," "Queen's Proctor," "Queen's Remembrancer," etc., during the reign of a female sovereign, see terms under **King** and also the following titles.

Queen's bench. The English court of king's bench is so called during the reign of a queen. See **King's bench.**

Queen's counsel. See **King's counsel.**

Queen's evidence. See **King's evidence.**

Queen's prison. A jail which used to be appropriated to the debtors and criminals confined under process or by authority of the superior courts at Westminster, the high court of admiralty, and also to persons imprisoned under the bankrupt law.

Queen's proctor. See **King's proctor.**

Que estate /kwiy ástéyt/. L. Fr. Whose estate. A term used in old pleading, particularly in claiming prescription, by which it was alleged that the plaintiff and those former owners *whose estate* he had had immemorially exercised the right claimed. This was called "prescribing in a *que* estate."

Que est le mesme /kwiy èy lə mém/. L. Fr. Which is the same. A term used in actions of trespass, etc. See **Que est eadem.**

Quemadmodum ad quæstionem facti non respondent judices, ita ad quæstionem juris non respondent juratores /kwemədmódəm æd kwèshchiyównəm fæktay nòn rəspóndənt júwdəsiyz, áydə æd kwèshchiyownəm júrəs nòn rəspóndənt jùrətóriyz/. In the same manner that judges do not answer to questions of fact, so jurors do not answer to questions of law.

Quem reditum reddit /kwém rédədəm rédət/. L. Lat. An old English writ which lay where a rent-charge or other rent which was not rent service was granted by fine holding of the grantor. If the tenant would not attorn, then the grantee might have had this writ.

Querela /kwəríylə/. Lat. An action preferred in any court of justice. The plaintiff was called *"querens,"* or complainant and his brief, complaint, or declaration was called *"querela."*

Querela coram rege a concilio discutienda et terminanda /kwəríylə kórəm ríyjiy èy kənsil(i)yow dəskàshiyéndə èt tərmənéndə/. A writ by which one is called to justify a complaint of a trespass made to the king himself, before the king and his council.

Querela inofficiosi testamenti /kwəríylə inəfishiyówsay tèstəméntay/. Lat. In the civil law, a species of action allowed to a child who had been unjustly disinherited, to set aside the will, founded on the presumption of law, in such cases, that the parent was not in his right mind.

Querens /kwírən(d)z/. Lat. A plaintiff; complainant; inquirer.

Querulous /kwérh(y)ələs/. Apt to find fault; habitually complaining; disposed to murmur. Expressing, or suggestive of complaint; fretful; whining.

Questa /kwésta/. A quest; an inquest, inquisition, or inquiry, upon the oaths of an impaneled jury.

Question. A subject or point of investigation, examination or debate; theme of inquiry; problem; matter to be inquired into, as subject matter of civil or criminal discovery. A point on which the parties are not agreed, and which is submitted to the decision of a judge and jury. See also **Issue.**

An interrogation put to a witness, for the purpose of having him declare the truth of certain facts as far as he knows them; *e.g.* direct or cross examination of witness at trial. See also **Discovery; Interrogation.**

Categorical question. One inviting a distinct and positive statement of fact; one which can be answered by "yes" or "no." In the plural, a series of questions, covering a particular subject-matter, arranged in a systematic and consecutive order.

2 : a commissioned officer of the U. S. Army Quartermaster Corps : a commissioned officer whose duty is to provide clothing and subsistence for a body of troops

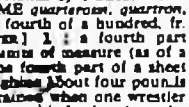
quartermaster general *n* : the U. S. Army major general commanding the Quartermaster Corps

quar·tern \'R 'kwȯrd·ərn, (tarn *sometimes by r-dissimilation* -ȯl; -R ·ȯ(a)d·ən, ·)tən, ·t·ᵊn\ *n* -s [ME *quarteron, quartron*, fr. OP *quarteron* fourth of a pound, fourth of a hundred, fr. *quartier* quarter — more at QUARTER] **1** : a fourth part : QUARTER **2** : a fourth of various units of measure (as of a pint, a gill, a peck, or a stone) **3** : the fourth part of a sheet of paper **4** *Brit* : a loaf of bread weighing about four pounds

quarter nelson *n* : a wrestling hold gained when one wrestler kneeling beside a prone opponent places his far hand on the opponent's head and passes his near arm under the opponent's adjacent arm and grasps the wrist of his own far arm — compare FULL NELSON, HALF NELSON, THREE-QUARTER NELSON

quarter nettings *n pl* : hammock nettings along a ship's quarter rails

quarter note *n* : a musical note equal in time value to a fourth of a whole note or a half of a half note : CROTCHET



quarter notes

quarteron *or* **quarteroon** *archaic var of* QUADROON

quarterpace \'ᵊ··ᵊ,·ᵊ\ *n* : a staircase landing where the stair turns at a right angle — compare HALFPACE

quarter-phase *adj* : of or relating to a combination of two circuits energized by alternating electromotive forces that differ in phase by a quarter of a cycle or by 90 degrees : of or relating to a four-wire two-phase system or apparatus having the neutral points of the two phases at the same potential : TWO-PHASE

quarter pieces *n pl* : the timbers of a ship's quarters where they meet the stern

quarter-pierced \'ᵊ··ᵊ,·ᵊ\ *adj, of a cross* : having the central square at the intersection of the arms cut out

quarter point *n* : QUARTER 19d

quarter post *n* : a post marking a corner of a quarter section of land

quarter race *n* : a quarter-mile race between two horses

quarter rack *n* : a rack regulating a clock's striking of the quarters

quarter rail *n* : a rail reaching from a ship's gangway to its stern — compare MONKEY RAIL

quarter rest *n* : a musical rest corresponding in time value to a quarter note

quarter rope *n* : a mooring rope from a ship's quarter

quarter round *n* : an ovolo presenting the profile of a quarter circle : ECHINUS

quarter run *n* : a contract providing for display of an advertising card in a fourth of the subway or trolley cars, railroad coaches, or buses in a district — compare FULL RUN, HALF RUN

quarters *pl of* QUARTER, *pres 3d sing of* QUARTER

quartersaw \'ᵊ··,ᵊ\ *vt* : to saw (a log) radially into quarters and then into boards or planks in which the annual rings are at or nearly at right angles to the wide face to secure lumber that will warp relatively little, will not be likely to check, and will show the grain advantageously — compare TANGENT-SAW

quarter screw *n* : any of the four regulating screws in a common kind of compensation watch or chronometer balance

quarter seal *n* : a seal that in shape and impression is a fourth part of the great seal of the nation

quarter section *n* : a fourth of a section : a piece of land 160 acres in area in a U. S. public-land survey

quarter sessions *n pl* [so called fr. its meeting quarterly] **1 a** : an English local court of record having original and appellate jurisdiction over petty crimes and less serious felonies and sometimes also over petty civil cases and local matters involving the public interest (as licenses and the repair of roads and bridges) and presided over usu. by two justices of the peace or by a magistrate or judge sitting with a jury in a county or by a recorder in a borough — compare PETTY SESSIONS **b** : a local Scottish court held quarterly by justices of the peace chiefly for review and appeal **c** : an intermediate court in parts of Australia (as New South Wales) having original and appellate criminal jurisdiction and consisting of a judge sitting with a jury **2** : a local court with criminal jurisdiction and sometimes administrative functions (as the care of roads and bridges) in some states of the U.S. (as Pennsylvania)

quarter sling *n* : a sling supporting a yard at one of a ship's quarters

quarter snail *n* : the snail used in the quarter part of a clock or repeater

quarterstaff \'ᵊ··,ᵊ\ *n* : a long stout staff used as a weapon and wielded with one hand in the middle and the other between the middle and the end

quarter strap *n* **1** : either of the straps leading from a cavalry saddle to the ring to which the cinch strap is made fast **2** : a strap around a yard at a ship's quarter often supporting a ring or grommet

quarterstretch \'ᵊ··,ᵊ\ *n* [so called fr. its extent of about a quarter of a mile] : HOMESTRETCH

quarter timber *n* : either of the two main timbers in the stern of a sailing ship with the fashion pieces forming the main framework of the counter

quarter tone *n* **1** *or* **quarter step a** : a musical interval of one half a half step **b** : a tone at such an interval **2** : a coarse-screen cut made from an enlarged photograph of a proof from a fine-screen halftone

quarter-turn drive *n* : a belt drive between pulleys whose axes are at right angles

quartervine \'ᵊ··,ᵊ\ *n* [so called fr. the ease with which the stem can be divided into quarters] : CROSS VINE

quarter waiter *n, obs* : a gentleman usher on duty in the English court for three months of each year

quarter watch *n* : a watch including one half of a full watch or one fourth of the ship's crew

quarter-wave plate *n* : a crystal plate that changes the phase difference between the two components of polarized light traversing it by one-fourth cycle — compare HALF-WAVE PLATE

quarter-witted \'ᵊ··ᵊ··\ *adj* : half as bright as a half-wit

quarter-yearly \'ᵊ··ᵊ··\ *adv (or adj)* : at three-month intervals

quar·tet *or* **quar·tette** \(')kwȯr'tet, ·ə(a)t·, *usu* -ed·+V\ *n* -s [alter. (influenced by *-et* or *-ette*) of *quartetto*] **1 a** : a musical composition or movement in four parts each performed by a single voice or instrument; *specif* : an instrumental piece in sonata form usu. for four stringed instruments (composed a ~) **b** : the group of four performers of such four-part music (woodwind ~) **c** : a performance of such a composition **2** : a group consisting of four (a ~ of articles —*Times Lit. Supp.*) (in some places no murder trial is complete without its pair or ~ of differing experts —Walter Goodman) **3** : any one of the four sets of micromeres cut off in spirally cleaving eggs with determinate cleavage in sequence from the four macromeres produced by the first two cleavage divisions

quartet table *n* : a nest of four small tables

quar·tet·to \ə'ted·(,)ō\ *n* -s [It, dim. of *quarto* fourth, fr. *quarto*, adj., fourth, fr. L *quartus*; akin to L *quattuor* four — more at FOUR] : QUARTET

quar·tic \'kwȯrd·ik\ *n* -s [ISV *quart-* + *-ic*, n. suffix] : a quartic polynomial or equation

quartic \'ˈ\ *adj* [*quart-* + *-ic*, adj. suffix] : of the fourth degree

quartile deviation *n* : one half of the difference obtained by subtracting the first quartile from the third quartile in a frequency distribution

quarting *pres part of* QUART

quar·to \'kwȯrd·(,)ō, ·ə(a)t·, ·t(,)tō\ *n* -s [L, abl. of *quartus* fourth] **1** : the size of a piece of paper cut four from a sheet; *also* : paper or a page of this size — abbr. *4to*, symbol 4° ; see BOOK tables **2** : a book printed on quarto pages (the volume is a ~, bound on the narrow side —Walter Millis)

quar·to·dec·i·man \ˌ··(,)o'desəmən\ *n* -s [LL *quartodecimani*, fr. L *quartus decimus* fourteenth (fr. *quartus* fourth + *decimus* tenth) + *-anus* -an; akin to L *quattuor* four — more at FOUR, DIME] **1** *usu cap* : one of a group in the early church esp. in Asia Minor who during the 2d century and until the Nicene council in 325 observed Easter on the 14th of Nisan when the Jews slaughtered the Passover lamb no matter on what day of the week that date occurred **2** : one of the Celtic Christians in the British Isles in the 7th century who followed a different mode of calculating the date of Easter from that used on the continent

quar·tole \'kwȯr,tōl\ *also* **quar·to·let** \'kwȯrd·ᵊl|et\ *n* -s [*quartole* ISV *quart-* + *-ole*; *quartolet* ISV *quartole* + *-et*] : QUADRUPLET 3

quart pot *n* [ME, fr. *quart* + *pot*] : a vessel holding a quart; *esp* : an Australian tin vessel used for cooking and as a drinking cup

quarts *pl of* QUART, *pres 3d sing of* QUART

quartz \'kwȯrts, ·ȯ(ə)ts\ *n* -ES [G *quarz*, fr. MHG, perh. of Slav origin; akin to Czech *tvrdý* quartz, fr. *tvrdý*, adj., hard; akin to Gk *teira* cord, rope, Lith *tvertì* to hold, contain] **1** : a mineral SiO_2 consisting of a silicon dioxide that occurs in usu. colorless and transparent but sometimes yellow, brown, purple, or green hexagonal crystals, that occurs also in crystalline masses of vitreous luster and in cryptocrystalline massive forms, and that next to feldspar is the commonest mineral (hardness 7, sp. gr. of crystals 2.65–2.66) **2** : gold or sometimes silver ore that is either broken or in place as distinguished from auriferous gravel

quartz battery *or* **quartz mill** *n* : STAMP MILL

quartz–crystal clock *or* **quartz clock** *n* : a clock in which the high uniform piezoelectric vibrations of a quartz crystal induced by current from a constant frequency generator are used to control the rate of a synchronous motor clock

quartz-diorite \'ᵊ··,ᵊ\ *n* : diorite containing appreciable amounts of quartz

quartz flint *n* : POTTER'S FLINT

quartz glass *n* : VITREOUS SILICA

quartz·ic \·sik\ *adj* [ISV *quartz* + *-ic*] : QUARTZIFEROUS

quartz·if·er·ous \(')kwȯ(r)t'sif(ə)rəs\ *adj* [*quartz* + *-ferous*] : bearing or containing quartz

quartz-ite \'kwȯrt,sīt\ *n* -s [ISV *quartz* + *-ite*] : a compact granular rock composed of quartz that is a metamorphosed sandstone in which the siliceous cement is often so blended with the quartz grains as to give the rock a nearly homogeneous texture

quartz·it·ic \(')·ə'sid·ik\ *adj* : containing quartzite

quartz lamp *n* : a mercury-vapor lamp in a tube of quartz glass that transmits most of the ultraviolet radiation

quartz mining *n* : the mining of gold on veins or ore bodies in place as distinguished from surface digging or washing : underground mining in rock — compare PLACER MINING

quartz·oid \'kwȯrt,sȯid\ *n* -s : a crystal that is common with quartz and consists of a combination of the hexagonal prism and dipyramid

quartz·ose \·,sōs\ *or* **quartz·ous** \·,səs\ *adj* [*quartzose* fr. *quartz* + *-ose*; *quartzous* prob. fr. F *quartzeux*, fr. *quartz* (fr. G *quarz*) + *-eux* -ous] : containing, consisting of, or resembling quartz

quartz plate *n* : a piece of quartz crystal cut in such a way as to be active piezoelectrically; *specif* : such a plate mounted with metal electrodes applied to its surfaces so that the combination is or resembles a condenser — compare PIEZOELECTRIC OSCILLATOR

quartz porphyry *n* : a porphyritic extrusive or dike rock in which quartz with more or less corroded crystals and orthoclase and usu. mica, amphibole, or pyroxene occur as phenocrysts in a groundmass that is felsophyric, granophyric, or vitrophyric

quartz sand *n* : a sand formed from quartz

quartz schist *n* : a metamorphosed schistose rock composed essentially of quartz often with some mica or tourmaline or both

quartz spectrograph *n* : a spectrograph having prisms and lenses of quartz and used for ultraviolet spectroscopy

quartz vein *n* : a vein filled with quartz either of igneous origin or deposited from solution

quartz wedge *n* : a piece of quartz cut in a thin wedge and used in the optical determination of minerals and in the study of polarized light

quartzy \·,sē\ *adj* : QUARTZOSE

qua·ru·ba \kwə'rübə\ *n* -s [prob. fr. Pg] : any of several trees of the genus *Vochysia*

¹quas *var of* KVASS

²quas *pl of* QUA

¹quash \'kwäsh *also* ·ȯ·\ *vt* ·ED/·ING/·ES [ME *quassen*, fr. MF *quasser, casser* to discharge, annul, partly fr. L *quassare* to shake, break into pieces and partly fr. LL *cassare* to annihilate, annul, fr. L *cassus* empty, void, without effect; L *cassus* akin to L *carēre* to be without — more at CASTE] *law* : to put an end to : make void : ABATE, ANNUL, OVERTHROW (~ a writ) (~ a service) (~ an indictment) (amnesty decree to ~ or cut sentences of wide range of convicts —*N.Y. Times*)

²quash \'ˈ\ *vb* ·ED/·ING/·ES [ME *quashen*, fr. MF *quasser, casser* to break, fr. L *quassare* to shake, break into pieces, fr. *quassus*, past part. of *quatere* to shake; akin to OE *hūdeman* to shake, MHG *hotzen* to set in motion, Icel *hossa* to bounce (a child) on one's knee, and perh. to Gk *passein* to sprinkle] *vt* **1** : to beat down or in pieces : dash forcibly : SQUASH (carts going by would ~ 'em —Lascelles Abercrombie) **2** : to suppress or extinguish summarily and completely : crush out : SUBDUE, QUELL (~ a rebellion) ~ *vi, obs* : to make a noise of splashing **syn** see CRUSH

quashgai *usu cap, var of* QASHQAI

quashy \'kwäshē\ *adj* ·ER/·EST [²*quash* + *-y*] : MARSHY, SWAMPY, WET (~ ground)

¹qua·si \'kwā,zī; *also* ·zē, ·ā,sī, ·sē; *sometimes* ·zē, ·ōzē, ·ōsē; *or* ·ī *instead of* ·ē\ *adv* [L, fr. *quam* than, how, as + *si* if — more at QUANTITY, SO] **1** : as if : as it were : in a manner : in some sense or degree : SEEMINGLY, ALMOST (the legatee was ~ an heir —O.W. Holmes †1935) — usu. joined to second element with a hyphen (a *quasi*-historical narrative) (*quasi*-universal literacy) (the *quasi*-diamond-shaped mouthpiece —William Yeomans) (served *quasi*-officially) **2** \'kwäzē, ·ī\ [It, fr. L] : in elect (andante ~ allegro) : APPROXIMATELY (~ largo) — used to qualify a musical direction

²quasi \'ˈ\ *adj* **1** : having some resemblance (as in function, effect, or status) to a given thing : SEEMING, VIRTUAL (a ~ argument) (its economic power gave it a position of ~ government —Fritz Tarnow) (in dance band orchestrations, the arranger develops into a ~ composer —Claude Lapham) — often joined to second element with a hyphen (a *quasi*-shawl) (*quasi*-republicanism) **2** : having a given legal status only by operation or construction of law and without reference to any intent of the party in interest (as the obligee or owner)

4 *Scots law* : a wrong not arising out of a contract, implied under the circumstances, and made actionable as a matter of public policy rather than on account of any deliberately wrongful conduct or intention

quasi deposit *n* : a deposit or bailment implied in law from the circumstances whereby one coming into possession of another's personal property by chance or mistake is deemed to be a bailee in order to do justice between the parties and to prevent unjust enrichment : a constructive or quasi bailment

quasi easement *n* : APPARENT EASEMENT

quasi ex con·trac·tu \ˌ··,ekskən'trak(,)t(y)ü\ *adv (or adj)* [L] : as if from or by contract — compare QUASI CONTRACT

quasi in rem \·ən'rem\ *adv (or adj)* [L, as if against a thing] : as if against a thing (as a right, status, property) : proceedings and judgments are *quasi in rem* when they are in a court having no jurisdiction over the person of the defendant, not seeking to adjudicate a right, title, or status as against all in the world, but seeking to apply specific property within the power of the court insofar as that property is available in satisfaction of a personal action or claim against the defendant) — compare IN PERSONAM, IN REM

quasi-judicial \ˌ··(,)ə+\ *adj* **1** : having a partly judicial character by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions arrived at and enforced after the general manner of procedures in courts (*quasi-judicial* bodies such as the National Labor Relations Board —*Atlantic*) **2** : essentially judicial in character but not within the judicial power or function nor belonging to the judiciary as constitutionally defined (*quasi-judicial* functions) (some method of *quasi-judicial* review is desirable —*Harvard Law Rev.*) — **quasi-judicially** \"+\ *adv*

quasi-legislative \"+\ *adj* **1** : having a partly legislative character by possession of the right to make rules and regulations having the force of law (the Interstate Commerce Commission is a *quasi-legislative* agency) **2** : essentially legislative in character but not within the legislative power or function or belonging to the legislative branch of government as constitutionally defined (*quasi-legislative* powers) (*quasi-legislative* authority)

qua·si-mo·do \ˌkwāzī'mō(,)dō, ·āsē+\ *n* -s *usu cap* [L *quasi modo* as if just now; fr. part of the opening words of the introit for that day (based on 1 Pet 2:2), *quasi modo geniti infantes* as newborn babes] : LOW SUNDAY

quasi-optical *pronunc at* 'QUASI +\ *adj* : resembling light in character or behavior — used of ultrashort hertzian waves

quasi partner *n* : NOMINAL PARTNER

quasi-public \ˌ··(,)ə+\ *adj* : essentially public (as in services rendered, functions performed, or source of income received) although under private ownership or control : affected with a public interest (*quasi-public* enterprises like railroads)

quasi-pupillary substitution \"+···\ *n, Roman law* : substitution of another heir upon the incapacity of an insane heir first named to take an inheritance

quasi rent *n* : revenue in excess of cost received from a service other than land use

quasi-reorganization \ˌ··(,)ō+\ *n* : a corporate procedure whereby recapitalization is achieved by the elimination of the existing deficit and the establishment of a new earned surplus account for future earnings only and without resort to the legal formalities of a complete reorganization

quasi-tangent arc \"+···\ *n* : CIRCUMZENITHAL ARC

quasi usufruct *n* : IMPERFECT USUFRUCT

quas·sy \'kwäsē\ *n* -ES [perh. irreg. fr. *oquassa*] : OQUASSA

quass *var of* KVASS

quas·sia \'kwäsh(ē)ə, ·äsēə\ *n* [NL, fr. *Quassi*, 18th cent. Surinam Negro slave who discovered the medicinal value of Surinam quassia + NL *-ia*] **1** *cap* : a genus of shrubs or trees (family Simaroubaceae) having pinnate leaves with winged petioles and large racemose scarlet flowers **2** -s : a drug consisting of the heartwood of various tropical trees of the family Simaroubaceae used in medicine as a bitter tonic and as a remedy for roundworms in children, as an insecticide, and in brewing as a substitute for hops — see JAMAICA QUASSIA, SURINAM QUASSIA

quas·sin \'kwäs'n\ *n* -s [ISV *quassi-* (fr. NL *Quassia*) + *-in*] : the bitter crystalline principle of quassia

¹quat \'kwät, ·at\ *vb* **quatted; quatted; quatting; quats** [ME *quaten*, fr. MF *quatir* to beat, fr. (assumed) *coactire* to press together — more at DECATING] *vt, dial chiefly Eng* **1** : beat down : SQUASH **2** : GLUT, SATIATE ~ *vi, chiefly dial* : SQUAT

²quat \"\ *adj* [ME, fr. past part. of *quaten*] *chiefly dial* : pressed close : SQUAT (the rest lay so ~ and close that they could not be apprehended —John Bunyan)

³quat \"\ *Scot var of* QUIT

⁴quat \"\ *n* -s [origin unknown] **1** *dial chiefly Eng* : an eruption of the skin (as a pimple, boil, sty) **2** *chiefly dial* : UP-START, WHIPPERSNAPPER

⁵quat *var of* KAT

quat *abbr* [L *quattuor*] four

quo·te·nus \'kwätənəs, ·ˌten·\ *prep* [L, how far, to what extent, fr. *quo* where, as, insofar as + *tenus* as far as, up to; akin to L *tendere* to stretch — more at QUA, THIN] : to the quality or capacity of : AS

quater- *comb form* [ISV, fr. L *quater* four times] : TETRA- — esp. in names of organic compounds to denote the quadrupling of a radical or molecule (*quaterphenyl*) (*quaterthiazole*)

quater-centenary \ˌkwād·ə(r), ·wäd·ᵊ··ᵊ\ *n* [L *quater* four times + E *centenary*] : a four-hundredth anniversary

¹quater-nary \'kwād·ərˌnerē, kwə'tarnərē\ *n* -ES [ME, fr. L *quaternarius*, adj., consisting of four each, fr. *quaterni* four each (fr. *quater* four times) + *-arius* -ary] **1 a** : a group of four **b** : a member of a fourth group **2** *usu cap* : the Quaternary period or system of rocks

²quaternary \"\ *adj* [L *quaternarius* consisting of four each] **1** : consisting of four parts or components : by fours or in sets of four (a ~ compound) **2 a** : fourth in order **b** *usu cap* : of or relating to the geological period from the end of the Tertiary to the present time — see GEOLOGIC TIME table **3** : characterized by replacement in the fourth degree **a** : united to four carbon atoms in organic radicals (a ~ carbon atom) **b** : consisting of or containing an atom (as nitrogen) united by four bonds to carbon atoms in organic radicals (~ ammonium $[R{\cdot}N]^+$) (~ salts)

quaternary ammonium compound *also* **quaternary** *n* -ES : any of a large class of strong bases and their salts that may be regarded as compounds of ammonium in which all four hydrogen atoms are replaced by organic radicals and that in many cases are used as surface-active agents, as disinfectants and germicides, and as drugs — compare CATIONIC DETERGENT, METHONIUM

quaternary silver *n* : silver containing three alloying elements and used for coinage (former British coinage of *quaternary silver* containing 50 percent silver, 40 percent copper, 5 percent nickel, and 5 percent zinc)

quater·nate \'kwād·ərˌnāt, kwə'tərnət\ *adj* [prob. fr. assumed NL *quaternatus*, fr. L *quaterni* four each + *-atus* -ate] : composed of or arranged in sets of four (~ leaves)

qua·ter·ni·on \kwə'tərnēən, ·wā't·\ *n* -s [ME *quaternioun*, fr. LL *quaternion-, quaternio*, fr. L *quaterni* four each (fr. *quater* four times) + *-ion-, -io* -ion; akin to L *quattuor* four — more at FOUR] **1** : a set of four parts, things, or persons : TETRAD (delivered him to four ~s of soldiers —Acts 12.4 (AV)) (the ~ of publishers —*Times Lit. Supp.*) **2 a** : [illegible]

BLACK'S 5TH (1979)

or principle. Antonyn of "casual" or "occasional." Palle v. Industrial Commission, 79 Utah 47, 7 P.2d 284, 290.

As to regular Clergy; Deposit; Election; Indorsement; Meeting; Navigation; Process; Session, and Term, see those titles.

Regular and established place of business. Under Judicial Code, § 48 (28 U.S.C.A. §§ 1400, 1694), permitting patent infringement suits to be brought in the district in which defendant committed acts of infringement and has a regular and established place of business, a "regular" place of business is one where business is carried on regularly, and not temporarily, or for some special work or particular transaction, while an "established" place of business must be a permanent place of business, and a "regular and established place of business" is one where the same business in kind, if not in degree, as that done at the home office or principal place of business, is carried on. A foreign corporation may have a "regular and established place of business" although business therein is merely securing orders and forwarding them to the home office. Shelton v. Schwartz, C.C.A. Ill., 131 F.2d 805, 808.

Regular course of business. This phrase within worker's compensation acts excluding from their benefits person whose employment is not in regular course of business of employer, refers to habitual or regular occupation that party is engaged in with view of winning livelihood or some gain, excluding incidental or occasional operations arising out of transaction of that business; to normal operations which constitute business.

Term used in connection with books and records kept by a business and which are admissible in evidence if the court finds as a preliminary matter that the entries therein were made in good faith, before the action was commenced, and that such records are part of the customary operation of the business.

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, is not excluded by the hearsay rule, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Fed.Evid.R. 803(6).

Term is also descriptive of sales which are ordinarily made by a business in contrast to a bulk sale.

Regular entries. Entries made in books of account in regular course of business. See also Regular course of business.

Regulariter non valet pactum de re mea non allenanda /règyəlérədər nón vælət pæktəm diy riy miyə nón èyliyənændə/. It is a rule that a compact not to alienate my property is not binding.

Regularly /règyələrliy/. At fixed and certain intervals, regular in point of time. In accordance with some consistent or periodical rule or practice.

Regular on its face. Process is "regular on its f when it proceeds from a court, officer, or body ha authority of law to issue process of that nature, is legal in form and contains nothing to notif fairly apprise any one that it is issued without aut ity.

Regulate. To fix, establish, or control; to adjus rule, method, or established mode; to direct by or restriction; to subject to governing principle laws. The power of Congress to regulate comm is the power to enact all appropriate legislation fo protection or advancement; to adopt measure promote its growth and insure its safety; to fo protect, control, and restrain. Virginian Ry. Co System Federation No. 40, Railway Employees partment of American Federation of Labor, C.C Va., 84 F.2d 641, 650. It is also power to presc rule by which commerce is to be governed, and braces prohibitory regulations. United States v. D by, 312 U.S. 100, 657, 61 S.Ct. 451, 456, 85 L.Ed. 6 Regulate means to govern or direct according to or to bring under control of constituted authority limit and prohibit, to arrange in proper order, and control that which already exists. Farmington Riv Co. v. Town Plan and Zoning Commission of Town Farmington, 25 Conn.Sup. 125, 197 A.2d 653, 6

Regulation. The act of regulating; a rule or ord prescribed for management or government; a reg lating principle; a precept. Rule of order prescrib by superior or competent authority relating to acti of those under its control. Regulation is rule or ord having force of law issued by executive authority government. State ex rel. Villines v. Freeman, Or 370 P.2d 307, 309. See **Regulations.**

Regulation A. This SEC regulation covers exemptio from registration filing requirements for certain sec rities offerings under a stated amount. Securities A of 1933, 15 U.S.C.A. § 77c(b).

Regulation Z. Regulations of Federal Reserve Boa which implement provisions of Federal Truth-in Lending Act. See **Truth-in-Lending Act.**

Regulation charge. Charge exacted for privilege or condition precedent to carrying on business. Se also Privilege (*Privilege tax*).

Regulation of an executive department. The gener rules relating to the subject on which a departme acts, made by the head of the department under som act of Congress conferring power to make such regu lations, and thereby give to them the force of law State ex rel. Kaser v. Leonard, 164 Or. 579, 102 P.2d 197.

Regulations. Such are issued by various governmenta departments to carry out the intent of the law. Agen cies issue regulations to guide the activity of thos regulated by the agency and of their own employee and to ensure uniform application of the law. Regu lations are not the work of the legislature and do not have the effect of law in theory. In practice, how ever, because of the intricacies of judicial review of administrative action, regulations can have an import tant effect in determining the outcome of cases in volving regulatory activity. United States Govern ment regulations appear first in the *Federal Register*

re-grasp \(ˌ)rē+\ *vt* [*re-* + *grasp*] : to take again into one's grasp : seize hold of anew (seeking to ~ lost liberties)

re-grass \(ˌ)rē+\ *vt* [*re-* + *grass*] : to plant again with grass : cause grass to grow on (as barren or cultivated land)

re-grate \rə'grāt, rē'-\ *archaic Scot var of* REGRET

re-grate \"\ *vt* -GD/-ING/-S [ME *regraten*, fr. MF *regrater*, *fr. regratier* regrater] 1 : to buy up (necessities of life) at a market or fair with the intention of reselling in or near the same place at a profit — compare ENGROSS 2 : to sell or dispose of (commodities bought in regrating) esp. at retail

re-grate \"\ *vt* -GD/-ING/-S [*F regratter*, fr. *re-* + *gratter* to scratch, scrape, fr. MF *grater* — more at GRATE] : to remove the outer surface of (masonry) so as to restore its appearance

re-grat-er *also* re-gra-tor \-ād-ə(r)\ *n* -S [*regrater* fr. ME *regrater*, *regratere*, fr. MF *regratier*, fr. OF; *regrator* fr. ME *regrater*, fr. AF, alter. (influenced by AF *-ator* -or, fr. OF *-eor*, *-eur*) of MF *regratier*; akin to OSp *regatero* regrater, Gfr *rigattiere*] 1 *a chiefly Brit* : one that regrates supplies or necessities b *dial* : a middleman who travels about the country buying up farm produce for market 2 *chiefly Brit* : one that gets profits or credits due another esp. by irregular means

re-grade \rə'grād\ *vi* -GD/-ING/-S [L *regredi* to go back] *astron* : to go back : RETROGRADE

re-greet \(ˌ)rē+\ *vt* [*re-* + *greet*] 1 *obs* : to greet again 2 *archaic* : to return the salutation of : offer a greeting to

re-greet *n* 1 *obs* : a greeting in return : a return salutation 2 *archaic pl, obs* : a message or words of greeting : GREETINGS

re-gress \rē,gres\ *n* -ES [ME *regresse*, fr. L *regressus*, fr. *regressus*, past part. of *regredi* to go back, fr. *re-* + *gradi* to step, go — more at GRADE] 1 : an act or the privilege of going or coming back : WITHDRAWAL, ACCESS (free ingress and ~ for ships) : as a : the right or power of falling back on another as primarily liable : RECOURSE b : reentry or right of reentry (as upon lands redeemed from forfeiture or default or upon a vacated benefice) 2 : RETROGRESSION, RETROGRADATION 3 : the act of reasoning backward (as from effect to cause)

re-gress \rə'gres, rē'-\ *vb* -ED/-ING/-ES [L *regressus*, past part. of *regredi* to go back] *vi* : to make or undergo regress : be subject to or exhibit regression : RETROGRADE; *often* : to tend to approach or revert to a mean ~ *vt* : to induce a state of psychological regression in (as by hypnosis or suggestion)

re-gres-sion \ə'greshən\ *n* -S [L *regression-*, *regressio*, fr. *regressus* (past part. of *regredi* to go back) + *-ion-*, *-io* -ion] 1 *a* : an act or the fact of regressing : REGRESS, RETROGRESSION, REVERSION b : a hypothetical reversal of direction in a biological evolutionary process that is sometimes invoked to explain the extinction of the graptolites and similar paleontologic phenomena 2 : a trend or shift toward a mean or toward a lower or less perfect state (as of function or differentiation): as a : apparent trend of offspring in respect to heritable characters away from specializations exhibited by their parents and toward the mean development characteristic of their biotype b : a functional relationship between two or more correlated variables that is often empirically determined from data and is used esp. to predict values of one variable when given values of the others (the ~ value of *y* on *x* is linear); *specif* : a function that yields the mean value of a random variable under the condition that one or more independent variables have specified values c : a gradual spontaneous diminution or fading of a latent or developed photographic image d (1) : progressive decline (as in size, severity, or intensity) of a manifestation of disease (marked ~ of a tumor often follows radiation) (~ of symptoms followed the climax) (2) : gradual loss of specific differentiation and function by a body part esp. as a physiological change accompanying aging (menopausal ~ of the ovaries) e (1) : reversion in behavior, thinking, attitudes, or identifications to an earlier mental or behavioral level or to an earlier stage of psychosexual development in response to organismic stress or to suggestion — compare FIXATION (2) : gradual loss of memories and acquired skills (as in old age) in which the order of development is reversed so that the most recent memories are lost first and the earliest acquisitions are the last to go 3 : retrograde motion esp. of an astronomical orbital characteristic

regression coefficient *n* : a coefficient in a regression equation : the slope of the regression line

regression curve *n* : a curve that best fits particular data according to some principle (as the principle of least squares)

regression equation *n* : the equation of a regression curve

regression line *n* : a regression curve that is a straight line

re-gres-sive \rə'gresiv, rē'-, -əzēv *also* -sav\ *adj* 1 : that regresses or tends to regress : RETROGRESSIVE 2 : characterized by or derived from reasoning backward (as from effect to cause or from observed facts to a principle) 3 : constituting or relating to a technique of micrological staining in which the stain is applied to excess and the excess later removed in order to enhance the specificity of the staining 4 *a* : of, relating to, typical of, or tending to produce regression (~ tissue changes) b : being, characterized by, or developing in the course of an evolutionary process involving increasing simplification of bodily structure 5 : having the nature of the first of two sounds dependent on the nature of the second (~ assimilation) 6 : decreasing in rate as the base increases — used of taxation and methods of apportioning taxes 7 : DEGRESSIVE b — re-gres-sive-ly \-sāvlē, -əlē\ *adv* — re-gressive-ness \-sivnəs, -səv- *also* -sav-\ *n* -ES

regressive sorites *n* : a sorites in which the order of the premises is reversed

re-gres-siv-i-ty \ˌrē,gre'sivəd-ē\ *n* -ES : the quality or state of being regressive : tendency toward regression

re-gres-sor \rə'gresə(r), rē'-\ *n* -S : one that regresses or is regressing

re-gress-us \-səs\ *n* -ES [L — more at REGRESS] : REGRESS

re-gret \rə'gret, rē'-, *usu* -ed-/+V\ *vb* **regretted**; **regretted**; **regretting**; **regrets** [ME *regretten*, fr. MF *regreter*, *regrater*, fr. OF, fr. *re-* + *-greter*, *-grater* (of Scand origin; akin to ON *grāta* to weep) — more at GREET] *vt* 1 : to remember with sorrow or grief : mourn the loss or death of : miss poignantly (that fair lady whom thou dost ~ —P.B.Shelley) 2 : to have dissatisfaction, misgivings, or distress of mind concerning : be keenly sorry for (~ one's mistakes) (~ my inability to be present) ~ *vi* : to experience regret

²**regret** \"\ *n* -S [MF, fr. OF, lamentation, fr. *regreter*, *regrater*, v.] 1 : sorrow aroused by circumstances beyond one's control or power to repair : grief or pain tinged with disappointment, dissatisfaction, longing, remorse, or comparable emotion (a scene that awakens ~) (keen ~ for past deeds) 2 *a* : an expression of sorrow, disappointment, or other distressing emotion (weary him with vain ~s) b **regrets** *pl* : a reply politely declining an invitation (send ~s) SYN see SORROW

re-gret-ful \-fəl\ *adj* : full of regret : REPINING — re-gret-ful-ly \-fəlē, -ilē\ *adv* — re-gret-ful-ness \-fəlnəs\ *n* -ES

re-gret-less \-ləs\ *adj* : feeling no regret : free from regrets

re-gret-ta-ble *also* re-gret-able \rə'gredəbəl, rē'-, -ētə-\ *adj* : admitting of or deserving regret — re-gret-ta-ble-ness \-bəlnəs\ *n* -ES — re-gret-ta-bly \-blē, -ilē\ *adv*

re-gret-ter \ə'gredə(r), -ētə-\ *n* -S : one that regrets

re-gret-ting-ly *adv* : in a regretting manner : with regret

re-grind \(ˌ)rē+\ *vt* [*re-* + *grind*] : to grind anew : to reshape or refit by grinding (had his valves *reground*)

re-group \"+\ *vb* [*re-* + *group*] *vt* : to form into a new grouping (in order to subtract 129 from 531 ~ 531 into 5 hundreds, 2 tens, and 11 ones) (~*ed* the products to make a better display) *etc* : to alter the [illegible]

guerdoner, fr. OF *regueredoner*, *regueredonner*, fr. *re-* + *guerdoner*, *guerredoner* to reward — more at GUERDON] *archaic* : REWARD

²**regueredon** \"\ *n* [ME *regueredoun*, fr. MF *regueredon*, fr. OF, fr. *regueredoner*, *regueredonner*, *v.*] *archaic* : REWARD

reg·u·la \'regyələ\ *n, pl* **regu·lae** \-,lē\ [L *regula* straightedge, rule] 1 : an architectural band or fillet esp. when one of a *series* beneath the taenia in a Doric architrave of which each corresponds to a triglyph above and has a row of six guttae on its lower side 2 : RULE (the authoritative ~ for community life)

reg·u·la·ble \'regyələbəl\ *adj* [*regulate* + *-able*] : capable of being regulated

reg·u·lant \-lənt\ *n* -S [*regulate* + *-ant*] : a substance or agent that regulates something (as plant growth)

¹**reg·u·lar** \'regyələ(r), + -g(ə)l-\ *adj* [ME *regular*, fr. MF, fr. LL *regularis* canonical, regular, containing a set of rules, fr. L, of or belonging to a bar, fr. *regula* straightedge, rule + *-aris* -ar — more at RULE] 1 : belonging to a Christian monastic order or community : living under or relating to a monastic rule (the ~ clergy) — opposed to *secular* 2 *a* : formed, built, arranged, or ordered according to some established rule, law, principle, or type : harmonious in form, structure, or arrangement : SYMMETRICAL (~ verse) (a man with ~ features) (a disciplined ~ landscape) b (1) : both equilateral and equiangular (a ~ polygon) (2) : having faces that are congruent regular polygons and all the polyhedral angles congruent (a ~ polyhedron) c *of a flower* : having the members of each whorl symmetrical with respect to form : ACTINOMORPHIC — compare IRREGULAR d : having or constituting an isometric system (~ crystals) 3 *a* : steady or uniform in course, practice, or occurrence : not subject to unexplained or irrational variation : steadily pursued : ORDERLY, METHODICAL (~ habits) b (1) : returning, recurring, or received at stated, fixed, or uniform intervals (a ~ income) (in the ~ course of events) (2) : functioning at proper intervals — used esp. of the bowels 4 *a* : constituted, selected, conducted, made, or otherwise handled in conformity with established or prescribed usages, rules, or discipline (a ~ meeting) (a ~ election) b : NORMAL, STANDARD, CORRECT: as (1) : undeviating in conformance to a standard set (as by convention, established authority, or a particular group) (2) : being such without any doubt : THOROUGH, COMPLETE, UNMITIGATED (a ~ scoundrel) (3) *slang* : like other good fellows in views and ways c (1) : conforming to the normal or usual manner of inflection (~ English nouns take *-s* or *-es* plurals) (2) : WEAK 8a d *of a postage stamp* : issued without restriction for the payment of all types of postage (the list included stamps of the ~ issue as well as airmails, special deliveries, and commemoratives) 5 *a* : of, relating to, or constituting the regular army of a state (a ~ soldier) b : constituting or made up of individuals properly recognized as legitimate combatants in war 6 *usu cap* : of, relating to, or belonging to the Regular Baptists 7 : of, relating to, or being a transaction on a stock exchange requiring delivery of the securities involved on the third full business day after purchase

SYN NORMAL, TYPICAL, NATURAL: REGULAR may imply conformity to a prescribed rule, standard, or established pattern (a *regular* meeting of the society) (following the *regular* procedure of the legislature) (their action was made *regular* and legal —J.R.Green) NORMAL suggests falling within the limits of a norm (if a boy has abnormal mental powers in some direction, combined with poor physique and great nervousness, he may be quite incapable of fitting into a crowd of *normal* boys —Bertrand Russell) (her intensity, which would leave no emotion on a *normal* plane, irritated the youth into a frenzy —D.H.Lawrence) TYPICAL applies to whatever shows to a marked degree characters or characteristics of a type, class, or group, sometimes to the exclusion of distinctive individual characteristics (peculiar to himself, not *typical* of Greek ideas —G.L.Dickinson) (until twenty years ago a *typical* English country town with wide High Street, narrow Market Street, picturesque Market Square, two ancient hostelries, fine old church, gabled almshouses —Compton Mackenzie) (what he had to do was to give plot and accurate delineation of character to the winds, make his personages *typical* rather than individual —Richard Garnett †1906) NATURAL describes whatever conforms with its nature, kind, or essence (the *natural* love of a mother for her child) (water as the *natural* environment of a fish) These words are often interchangeable and are often used together (a mode of thinking, a distinctive type of reaction, gets itself established, in the course of a complex historical development, as typical, as *normal* —Edward Sapir)

²**regular** \"\ *n* -S 1 : a member of a Christian monastic order or community following a rule : one of the regular clergy (controversy between the seculars and the ~s) 2 : a soldier in a regular army — usu. used in pl. 3 *a* : one (as a customer or contributor) that is regular esp. in pursuing a fixed or recurrent routine b : one that can be trusted or depended upon with assurance c : a player on an athletic team who usu. starts every game 4 : a clothing size designed to fit the person of average height

³**regular** \"\ *adv, chiefly dial* : REGULARLY

⁴**regular** \"\ *adj* [NL *Regularia* & NL *Regulares*] : of or relating to the Regularia or Regulares

regular army *n* : a permanently organized body constituting the army of a state and being often identical with the standing army that is maintained by a federal government

regular baptist *n, usu cap R&B* 1 : a member of a moderately Calvinistic Baptist sect that is found chiefly in the southern U.S., represents the original English Baptists before the division into Particular and General Baptists, and observes close communion and foot washing 2 : a Baptist who belongs to the General Association of Regular Baptist Churches formed in 1932 by churches which had withdrawn from the Northern Baptist Convention

regular canon *n, sometimes cap R&C* : CANON REGULAR

regular canoness *n* : a canoness bound by a vow of poverty and following a strict religious rule

regular clerk *n* : CLERK REGULAR

regular clerk of st. paul *usu cap R&C&S&P* [after *St. Paul* ab A.D. 67 Christian apostle to the Gentiles] : a member of a Roman Catholic congregation founded in 1530 in Milan — called also *Barnabite*

regular deposit *n* : SPECIAL DEPOSIT

reg·u·lar·es \ˌregyə'la(ə)(ˌ)rēz\ *n pl, cap* [NL, fr. LL, pl. of *regularis* regular] *in former classifications* : an order or other group comprising all symmetrical Blastoidea

¹**reg·u·lar·ia** \ˌre'la(ə)rēə\ *n pl, cap* [NL, fr. LL, neut. pl. of *regularis* regular] *in some classifications* : a division of Echinoides including the ordinary sea urchins that have a more or less globular symmetrical shell with 20 meridional rows of plates and the mouth and anus at opposite poles

²**regularia** \"\ [NL, fr. LL, neut. pl. of *regularis* regular] *syn of* REGULARES

reg·u·lar·i·ty \ˌregyə'larəd-ē, -ratē, -i *also* -ler-\ *n* -ES [F *régularité*, fr. MF *regularité*, fr. LL *regularis* regular + MF *-ité* -ity] 1 : the quality or state of being regular (~ of outline) (~ of habits) 2 : something that is regular

regularity theory *n* : a view held by Humeans: an event may be the cause of another event without there being a necessary connection between the two

a strophe and an antistrophe of identical and an epode of corresponding form

regular peloria *n* : peloria in which symmetry is attained by decrease in number of normally irregular parts — compare IRREGULAR PELORIA

regular pyramid *n* : a pyramid whose base is a regular polygon and whose vertex is on the perpendicular to the base through its center

regular reflection *n* : reflection such that the angle of reflection of the light is equal to the angle of incidence and on the opposite side of the normal to the point of incidence

regulars *pl of* REGULAR

regular sequence *n* : a sequence possessing a limit : a convergent sequence

regular solid *n* : any of five regular polyhedrons : a regular tetrahedron, hexahedron, octahedron, dodecahedron, or icosahedron

regular year *n* : a common year of 354 days or a leap year of 384 days in the Jewish calendar — see YEAR table

reg·u·lat·able \'regyəˌlād-əbəl, -ilāt-, -ə'lāt-\ *adj* : capable of being regulated

reg·u·late \'regyəˌlāt, *usu* -ād-+V\ *vb* -ED/-ING/-S [LL *regulatus*, past part. of *regulare*, fr. L *regula* straightedge, rule — more at RULE] *vt* 1 : to govern or direct according to rule (laws which ~ the succession of seasons); *usu* : to bring under the control of law or constituted authority : make regulations for or concerning (~ the industries of a country) 2 *a* : to reduce to order, method, or uniformity : REGULARIZE (~ one's habits) b *obs* : DISCIPLINE 3 : to fix the time, amount, degree, or rate of (as by adjusting, rectifying) (~ the pressure of a tire); *also* : to adjust so as to work accurately or regularly (~ a clock) ~ *vi* : to make regulations

regulated company *n* : a mercantile association holding by government charter exclusive trading rights with specified lands and combining freedom for the individual to trade on his own capital with regulations limiting trade in order to keep up prices

regulating box *n* : a rheostat for regulating the electric current passing through the field-magnet coils (as of a dynamo)

regulating station *n* : a military command agency that controls all movements of personnel and supplies into and out of a given area

reg·u·la·tion \ˌregyə'lāshən\ *n* -S [*regulate* + *-ion*] 1 : an act of regulating or the condition of being regulated (the ~ of her mind) (business suffering from undue ~) 2 *a* : an authoritative rule or principle dealing with details of management, esp : one imposed to promote safety and efficiency (as in a school or factory) b : a rule or order having the force of law issued by the executive authority of a government and under power granted by a constitution or delegated by legislative act (~s governing the use of coordinate legislation issued by a branch of government and under the authority and subject to the veto of parliament) — compare PROFESSIONAL CANON, STATE PAPER sense 2a (2) : one issued by the president of the U.S. or by an authorized subordinate — called also *executive order* (3) : an administrative order issued by an executive department or a regulatory commission of the U.S. government to apply and supplement broad congressional legislative enactments 3 : the percentage variation in some characteristic quantity (as voltage) as a machine or apparatus becomes loaded; *also* : the ratio of deviation of such a quantity at rated load to its normal value at no load 4 *a* : redistribution of material (as in an embryo) to restore a damaged or lost part independent of new tissue growth — compare REGENERATION b : the mechanism by which an early embryo maintains essentially normal development in the face of abnormal conditions c : DETERMINATION SYN see LAW

²**regulation** \"\ *adj* : prescribed by or being in accord with regulations (the ~ cap of a nurse); *broadly* : USUAL, CUSTOMARY (the ~ accompaniments of a Thanksgiving dinner)

¹**reg·u·la·tive** \'regyəˌlād-i\v, -lə\, -ət\, -ēv *also* -əv\ *adj* 1 : tending to regulate : having regulation as an aim (a ~ statute) 2 *a* : directing or regulating in the manner of a rule to be followed or an end to be attained — compare REGULATIVE PRINCIPLE b : constituting in Kantianism the ideas of reason (as First Cause) that arise in the mind because ideal knowledge requires the conception of the totality of conditions for anything given as conditioned — contrasted with *constitutive* 3 : capable of regulation : involving progressive determination and restriction of initially totipotent material — used of a developing zygote or its state; compare MOSAIC

²**regulative** \"\ *n* -S : something (as a principle or enactment) that has regulative force

reg·u·la·tive·ly \-ivlē, -ilē\ *adv* : in a regulative manner : so as to be regulative

regulative principle *n* : a rule or principle of procedure: as a *archaic* : the principle underlying syllogistic inference or in accordance with which any particular inference is drawn b : a rule of procedure to which there is no alternative if the desired end is to be secured although it cannot itself assure attainment

reg·u·la·tor \'regyəˌlād-ə(r), -ilāt-\ *n* -S : one that regulates: as a (1) : one of a board of seven appointed by King James II in 1687 with powers to appoint and remove officers and freemen at their discretion for the purpose of influencing the election of members of Parliament (2) *usu cap* : a member of any of various associations of the poorer people in No. Carolina existing from 1767 to 1771, formed to resist official extortion, refusing to pay taxes, and committing many deeds of violence (3) : a member of any of various bands or volunteer committees in the U.S. formed in newly occupied or settled regions before the establishment of local government to preserve order, prevent crime, and administer justice b (1) : a person who regulates mechanisms (as clocks) or conditions (as of traffic) (2) : a worker who hangs or bolts up ship plates on the frame of a ship c (1) : an automatic device for maintaining the current, voltage, speed, or other characteristic of a machine, transformer, or comparable device at a specified value or for adjusting these quantities at will (2) : a lever or index in a watch for altering the effective length of the hairspring to make the watch go faster or slower (3) : an accurate master clock used for timing watches and clocks — compare ASTRONOMICAL CLOCK (4) : GOVERNOR 4b (5) : a sliding door for controlling ventilation in a mine (6) : a balance valve for controlling the admission of steam to the steam chest in a locomotive (7) : a reducing valve or steam-pressure regulating device (8) *Brit* : a throttle on a locomotive d (1) : a substance added in a reaction to regulate the amount of another substance formed (2) : GROWTH REGULATOR (3) : PLANT REGULATOR

regulator pin *n* : either of two short upright thin cylindrical pins that are fitted in a watch regulator bearing or banking the hairspring in such a manner that moving the regulator into a position in which the pins touch the hairspring closer to its center shortens the spring and causes the watch to run faster

reg·u·la·to·ry \'regyələˌtōrē, -tōr-, -ri\ *adj* 1 : of or relating to regulation : making or concerned with the making of regulations : REGULATIVE (~ measures) (a local ~ body) 2 : subject to regulation (~ products that are considered dangerous and may be shipped only under stipulated conditions of packaging, labeling, and handling)

¹**reg·u·line** \'regyəˌlīn, -ˌlēn\ *adj* [prob. fr. (assumed) NL *regulinus*, fr. ML *regulus* + L *-inus* -ine] : of, relating to, or [illegible]

Am. Rep. 103]." The court also quoted as follows from the opinion of Mr. Justice Christiancy in People v. Hurlbut, 24 Mich. 44, 9 Am. Dec. 103: "As to this mode of appointment being the exercise of a power essentially executive in its nature, it is sufficient to say that executive power cannot always be defined by any fixed standard, in the abstract. What would come within the executive power in our form of government, would fall within the legislative in another, and vice versa. The question here is, whether, under our constitution, it is executive or legislative; and as the constitution has not confided the appointment of these or the like officers to the executive authorities, and has left it to the legislative discretion whether to create such officers, and how they shall be filled, it cannot be truly said that such an appointment is any more in the nature of the exercise of an executive than of a legislative power."

We believe that the appointment of the defendant was not complete and beyond recall until the power to reconsider had been cut off by the time stipulated in rule 28, that reconsideration was proper, and plaintiff was thereafter elected to the office.

The order of ouster is hereby affirmed, but without costs to either party.

Clark, Potter, Sharpe, and Fead, JJ., concur with Butzel, J.

Wiest, J., dissenting:

For the reasons stated by me in Walter P. North v. John A. Wagner (Mich.) 249 N. W. 494, I dissent.

McDonald, Ch. J., concurs with Wiest, J.

ANNOTATION.

Reconsideration of appointment, or confirmation of appointment, to office.
[Officers, § 32½.]

Division VI. of this annotation supersedes the annotation in 2 A.L.R. 1657.

I. Introductory; how problem arises.

a. In general: statement of problem.

It is only natural that a person or collective body in whom a power of appointment has been vested should occasionally experience a change of heart with respect to the wisdom of their selection, and desire to reconsider the appointment. It is with this question of the power of an appointive body to reconsider its action and revoke the appointment that the present annotation is concerned.

It should be observed that the annotation is not concerned with cases involving the removal of officers from office. Since the reconsideration and revocation of an appointment in effect produce the same result as a removal, the two classes of cases are very closely allied and occasionally confused in the decisions. There is, however, a clear distinction between a reconsideration and a removal. In the case of a reconsideration, the action of the appointive power in revoking the appointment is taken at a time, usually within a brief period after the appointment, such that, even though it has no power of removal, the appointive power may well feel that its will has not been finally expressed, and that the matter is still within its control. In the case of a removal, it is admitted that the title to the office has vested in the appointee and that he rightfully holds the office, but it is sought to have this title to the office forfeited and the appointee ousted therefrom. As stated above, the present annotation is concerned only with the first class of cases.

b. Officers removable at will.

For the general question of when an officer is removable at will or pleasure, see 22 R. C. L. 562.

Where the appointive body is vested with the power to remove the appointee at will, without the necessity of preferring charges against him or of giving him an opportunity to be heard, the question under discussion in the present annotation ordinarily would not arise, since, in such a case, the appointive body could accomplish the desired result without resorting to its right of reconsideration.

It is possible, however, for the question of the right of reconsideration to arise even though the appointive body has the power of removing the officer at will, as in Tuck v. Victoria (1892) 2 B. C. 179, discussed at length infra, subd. V. e, where the appointive body, instead of taking the natural course open to it of summarily removing the officer, denies the validity of the action taken by it and seeks to rescind the appointment. And see Re Fitzgerald (1903) 82 N. Y. Supp. 811 (affirmed in (1903) 88 App. Div. 434, 84 N. Y. Supp. 1125) infra, subd. VI. c, in which it was said, in connection with a resolution of a common council attempting to rescind the council's confirmation of an appointment made by the mayor, that the rescinding resolution could not be given effect as a removal of the officer from office even though the council, under the city charter, had the power summarily to remove the officer.

Attention is also called in this connection to Reg. v. Thomas (1838) 8 Ad. & El. 133, 112 Eng. Reprint, 807, a case involving the rescission of an appointment of a town clerk who had never received any communication of his appointment and had never given the security required by law for the office, in which it was held that it was

doubtful whether the power vested in the council to remove the clerk at will could be exercised with respect to such an appointee if the appointment had never actually been carried into effect, there being no one to remove in such a case, but that there could be no question that, under the circumstances, the council might rescind the appointment.

Also, where there are certain restrictions upon the right of a board or commission to rescind resolutions passed by it, although it is within the power of the board or commission to remove the appointee at its own pleasure, the question may arise as to whether the restrictions on the right to rescind apply to removals.

Thus, in Ex parte Richards (1878) L. R. 3 Q. B. Div. (Eng.) 368, the removal of a clerk by a local board through a resolution passed by the board to that effect was held to be an independent resolution, and not a rescission of the former resolution appointing the clerk, so that the board was not bound to follow its by-law providing that "no resolution of the local board shall be altered or rescinded unless one month's notice be given by the clerk to each member of the board, setting forth the proposed alteration, or unless there be at least as many members present at such meeting as were present at the meeting when this resolution was adopted." With respect to this by-law of the board, it was said: "When it is said that no resolution shall be altered or rescinded unless a month's notice is given, and it is rescinded by a meeting consisting of a certain number of members, I think the provision must be intended to apply to some subsisting rule or order of the board as to some of the substantive matters within their jurisdiction. It cannot be meant that a resolution to appoint a man to an office is altered or rescinded within the meaning of these words by his dismissal from office. The resolution to dismiss is a fresh and independent resolution, and not a rescission of the former resolution."

It should be noted, also, that there are very strong practical considerations against the granting of relief to one who has been ousted from office through the act of the appointive body in rescinding the resolution of appointment, merely upon the ground that the appointive body was without power to rescind the resolution, where the officer is removable at the pleasure of the appointing power; since, in such a case, even though the appointive power is forced to reinstate the officer, it may immediately remove him under its power of removal. This argument was mentioned and relied on in Ex parte Richards (Eng.) supra. It was also mentioned in Tuck v. Victoria (B. C.) supra, in connection with the defendant's contention that the remedy should have been by mandamus instead of an action for the wrongful dismissal.

It will be observed that the above considerations with respect to the reconsideration of an appointment where the appointee is removable at will might well arise in connection with the appointment and removal of deputies, such officers being ordinarily removable at the will of their superiors. For a case involving the reconsideration of an appointment of a deputy, see Edmunds v. Barton (1865) 31 N. Y. 495. And see Griggs v. Weston County (1895) 5 Wyo. 274, 40 Pac. 304, in which it was said, with respect to the power of a board of county commissioners over the office of deputy county clerk after it had consented to the appointment of a deputy by the clerk, that it might withdraw its consent to the creation of the office and remove the appointee at any time, where the statute governing the office of deputy did not provide for any fixed or definite term.

In view of the general rule that in the case of an office for which no definite term is fixed the officer holds at the pleasure of the appointing power (see 22 R. C. L. 562), it would seem that appointments to such offices would stand upon the same footing with respect to reconsideration as other appointments to hold at will.

Charles H. BURKE and Harry D. Witt, Plaintiffs,

v.

Ronald SCHMIDT and Elvern Varilek, Defendants.

No. 11001.

Supreme Court of South Dakota.

Argued Sept. 24, 1971.

Decided Oct. 27, 1971.

Original action in the nature of quo warranto to determine rights of two members of the Board of Regents. The Supreme Court, Biegelmeier, P. J., held that where outgoing Governor's letters appointing two new board members was received January 2 by Secretary of State, new Governor who took office on January 5 filed two letters on January 11 with the Secretary stating he was withdrawing the prior appointments, but the Secretary in forwarding the appointments to state Senate did not include the January 11 letters or mention that such letters had been filed, old board members, whose positions were to be filled by the appointees, were entitled to be seated as members of the Board to hold office until their successors were appointed, confirmed by the Senate, and duly qualified.

Judgment accordingly.

Winans, J., dissented and filed opinion.

1. States ⇐43, 46

Office of Governor is continuing one, irrespective of person who occupies it, and succeeding Governor has same power over appointment as predecessor Governor would have had if he had continued in office.

2. States ⇐46

Tests as to whether Governor may withdraw "appointment" or "nomination" prior to approval by legislative body does not depend on nomenclature used but rather on whether Governor's action is final and complete and places appointee or nominee in office without further action. Const. art. 14, § 3; SDCL 13–49–1, 13–49–3, 13–49–5.

3. Colleges and Universities ⇐7

Member of Board of Regents, after his term of office expires, can act as regent until new appointee, if any, is confirmed by state Senate, takes the oath as such and becomes vested with the office of regent; if by oversight or some other reason no appointments are made, or if made are not confirmed, members whose terms had expired would remain in office. SDCL 13–49–3, 13–49–4.

4. States ⇐46

State Senate may take official notice of facts relative to appointments of persons to office requiring its confirmation and is bound to take notice of complete official record thereof.

5. Quo Warranto ⇐29

Board of Regents members, who appeared at one or more meetings of the Board in January and February stating that they were to continue their membership on the Board and who were refused recognition by the Board which voted to seat third persons, claiming to be successor members, at one meeting and refused to reconsider its action at later meeting, could not be charged with laches and unreasonable delay in commencing action in nature of quo warranto to determine whether they were still board members, were not estopped from asserting their cause of action and did not abandon their right to board membership.

6. Colleges and Universities ⇐7

Where outgoing Governor's letters appointing two new members to the Board of Regents were received January 2 by Secretary of State, new Governor who took office on January 5 filed two letters on January 11 with the Secretary stating he was withdrawing the prior appointments,

but the Secretary in forwarding the appointments to state Senate did not include the January 11 letters or mention that such letters had been filed, old board members, whose positions were to be filled by the appointees, were entitled to be seated as members of the Board to hold office until their successors were appointed, confirmed by the Senate and duly qualified. SDCL 13–49–3, 13–49–5.

David A. Gerdes, Pierre, argued the cause for plaintiffs. Martens, Goldsmith, May, Porter & Adam, Pierre, on the briefs.

Steven L. Jorgensen, Sioux Falls, argued the cause for defendants. Willy, Pruitt, Matthews & Jorgensen, Sioux Falls, on the briefs.

William J. Srstka, Jr., Asst. Atty. Gen., Pierre, argued the cause and filed a brief on behalf of Gordon J. Mydland, Atty. Gen., as amicus curiae.

ORIGINAL ACTION

BIEGELMEIER, Presiding Judge.

This is an original action in the nature of quo warranto to determine the rights of two members of the Board of Regents.[1] From the stipulated facts it appears plaintiffs were appointed members of the State Board of Regents by Governor Nils A. Boe after his inauguration January 5, 1965. Plaintiff Burke filed his oath of office on January 13, 1965, and plaintiff Witt on January 15, 1965. Their predecessors having ceased to act, plaintiffs attended Board meetings and acted as Regents at four meetings prior to February 9th when they were confirmed by the Senate on February 9, 1965. On previous occasions since 1956 Regents commenced their duties after filing their oaths and before Senate confirmation; however, in none of those instances was that conduct disputed.

By a letter to the Secretary of State dated December 30, 1970, Governor Farrar informed her he had appointed defendant Schmidt as a member of the Board to succeed plaintiff Burke and by similar letter dated January 2, 1971, that he had appointed defendant Varilek as such member to succeed plaintiff Witt. The letters, which the Secretary of State received January 2, 1971, authorized her to issue commissions accordingly. Their oaths of office were also filed with her on January 2, 1971. The letters, signed by the Governor, and the certificates, signed by the Governor and the Secretary of State on the date last mentioned, stated the appointments were to be effective January 1, 1971, and continue for six years until January 1, 1977, or until their successors shall have qualified, "subject to confirmation of the State Senate."

On November 3, 1970, Richard F. Kneip was elected Governor, and on Tuesday, January 5, 1971, at 12 o'clock m. he took the constitutional oath of office as Governor.[2]

On January 11, 1971, Governor Kneip signed and filed with the Secretary of State two letters in which he stated he was withdrawing the "recommended" appoint-

1. SDCL 21–28.

2. SDCL 3–1–2 provides in part, "all state * * * officers shall qualify and enter upon the duties of their office on the first Monday of January succeeding their election or within twenty days thereafter." In 1971 the first Monday was January 4, 1971. SDCL 3–1–5 requires: "Every person elected or appointed to any civil office * * * shall, before entering upon the duties thereof, qualify by taking an oath or affirmation to support the Constitution of the United States and of this state, and faithfully to discharge the duties of his office, naming it". It may be of interest as to the effect these sections have on constitutional provisions. Article IV, § 1, fixes the term of the Governor at two years, and Article XXVI, § 19, provides the first Governor elected in 1889 shall hold office until the first Tuesday after the first Monday in January 1891 at 12 m. or until his successor is elected and qualified.

ments of defendants Schmidt and Varilek as members of the Board of Regents.

Except for sessions called on extraordinary occasions (Art. IV, § 4, not applicable here), legislative sessions are provided for in Art. III, § 7, S.D.Const., as follows:

"The Legislature shall meet at the seat of government on the first Tuesday after the first Monday of January at 12 o'clock m. in the year 1963 and in the year 1964 and each even-numbered year thereafter, and on the first Tuesday after the third Monday of January at 12 o'clock m. in the year 1965 and each odd-numbered year thereafter, and at no other time except as provided by this Constitution."

Pursuant thereto the Senate met on January 19, 1971, for its first session. After showing certificates by the Secretary of State of the filing of oaths of senators-elect and other constitutional officers, the Senate Journal shows another certificate dated January 19, 1971, which includes copies of the letters of Governor Farrar relating to the appointments of defendants.[3] The original letters were addressed solely to the Secretary of State; the Senate Journal shows letters addressed to the President and members of the Senate. These appointments were confirmed in executive session the same day. The Secretary of State did not include in her certificate copies of the January 11, 1971 letters of Governor Kneip withdrawing the Farrar appointments of defendants nor mention that such letters had been filed in her office.

[1] The office of the Governor is a continuing one, irrespective of the person who occupies it, and a succeeding Governor has the same power over an appointment as the predecessor Governor would have had if he continued in office. State ex rel. Kriebs v. Halladay, 52 S.D. 497, 219 N.W. 125. This seems to be the general rule. Annot. 89 A.L.R. 132 at 136 et seq. Therefore, we may approach this question as if Governor Farrar had made the withdrawal.

Relevant provisions of our Constitution and statutes applicable to Regents are next set out. Article XIV, § 3 of the South Dakota Constitution provides:

"educational institutions that may be sustained either wholly or in part by the state shall be under the control of a board of five members appointed by the Governor and confirmed by the senate under such rules and restrictions as the Legislature shall provide. The Legislature may increase the number of members to nine."

SDCL 13–49–1 states:

"The control of the public, post-secondary educational institutions of the state * * * shall be vested in a board of seven members, designated as the board of regents. The board members shall be appointed by the Governor, by and with the consent of the senate."

SDCL 13–49–3 reads:

"The term of office of each regent shall be for six years from and after the first day of January immediately preceding his appointment and confirmation, and until his successor is duly qualified, unless sooner removed. The expiration of all terms shall occur on the first day of January of each odd-numbered year * * *."

There is some divergence of opinion respecting the right of an appointing executive to withdraw or recall appointments made by him which are subject to subsequent approval by a legislative body. These two views were discussed by the court in McBride v. Osborn, 1942, 59 Ariz. 321, 127 P.2d 134, where it wrote:

3. It certifies to copies of letters of appointment of defendants. They are not exact copies of the letters of Governor Farrar which are part of the Stipulation of facts. The Senate Journal then shows that before election of any officers some permanent rules of the Senate were adopted which changed prior rules, including those with reference to confirmation by the Senate.

"The governor cancelled the appointment of petitioner and withdrew his name from the senate upon the theory that he had the right to do so any time before action by that body, while the petitioner's position is that by appointing him and submitting his name to the senate for confirmation, the governor exhausted his power in that respect and could do nothing more concerning it unless and until it was rejected by that body. Several decisions are cited by petitioner in support of this proposition (citing cases). An examination of these authorities, however, and others of the same tenor, discloses that the appointment in each case had the effect of vesting the appointee with the office, and it is clear that to have held the governor, or other appointing power, could cancel an appointment and withdraw the name of appointee from the consideration of the senate, would have given the governor, or other appointing power, the right to remove from office when that right did not exist under the law, except after a hearing and for cause. If appointment by the governor had had the effect of placing petitioner in the office of industrial commissioner and authorizing him to perform its functions, there could be no question but that the proposition that the governor had exhausted his power in making the appointment and could not withdraw it would apply. But we are unable to see wherein this could have any application at all where the appointment does not have the effect of vesting the appointee with the office. * * * And this is true, whether sending the name to the senate for confirmation be treated merely as a nomination or as an appointment, because in neither instance would the act of the governor alone entitle his appointee to the office. The approval of the senate is just as necessary as the action of the executive to complete the appointment and give the appointee any right whatever to take over the office and discharge its duties."

[2] It is sometimes claimed, as defendants here claim, that if the action of the Governor is deemed an "appointment" the Governor may not withdraw it, but if it is a "nomination" the Governor may withdraw it. We do not believe the nomenclature[4] used ought to be that test, but rather whether the action of the executive is final and complete and places the appointee in office without further action.[5] Our court in State ex rel. Kriebs v. Halladay, 52 S.D. 497, 219 N.W. 125, embraced that view when it wrote:

"In this case the appointment of Halladay remained in force[6] until it was acted upon by the Senate. On January 7th, while it was still in force, the Senate confirmed it. The *appointment thereupon became complete*, Halladay qualified- * * *". (Emphasis supplied)

[3] We have not overlooked that part of SDCL 13–49–3, supra, which fixes the term of office of a Regent as six years from and after the first day of January immediately preceding his appointment and confirmation and until his successor is

4. Art. XIV, § 3, S.D.Const., SDCL 13–49–1 and 13–49–3 use the words appointed or appointment, while SDCL 13–49–5 uses the word nominate in describing the act, as did the original 1897 Session Law, Ch. 58, § 3, while § 2 thereof used the term nomination. From Senate Journals it appears Governors used the term nominate up to 1965 and the term appoint thereafter. The use of both of these terms is persuasive that some reason other than the nomenclature used should be the basis of decision—our conclusion of finality therefore is preferable and we conclude sound.

5. Many appointments fall in this category. Illustrative of these are vacancies in offices of the District County, Circuit and Supreme Courts, SDCL 3–4–3 and Art. V, § 37, S.D.Const.; and in the Legislature, Art. III, § 10.

6. This means only that it remained in force as an appointment upon which the Senate is authorized to act.

duly qualified, which defendants contend indicates their appointments vested them with the office of Regents. It clearly was a practical decision to fix the time a Regent's appointment terminated by setting a date from which the six-year term would commence. As is apparent, six years could not elapse as a later than January 1st confirmation would always shorten it. It is not necessary to determine in this proceeding when the appointee becomes clothed with de facto authority of a Regent so as to bind the Board or the State as to contracts made within its powers, though it seems logical the Regent whose six-year term may have expired is authorized to act as such until his successor has "duly qualified". The Governor may withhold a new appointment until the first day of February of the odd-numbered year (SDCL 13–49–3) and up to that time the former Regent may act as such. It would also seem logical that he could do so until the new appointee, if any, was confirmed by the Senate and then took the oath as such and became vested with the office of Regent, and, if by oversight or some other reason, no appointments were made or, if made and not confirmed, those members whose "terms" had expired would remain in office.

Our conclusion is further supported by the wording of SDCL 13–49–4 which provides in case a member of the Board shall die, resign, remove from the state, etc., the Governor shall fill the vacancy by suitable and prompt appointment, with the specific clause that "*such appointee shall be clothed with full authority as a regent*, but this term of service shall expire with the next legislative session, unless sooner confirmed by the senate." The portion of this clause which we have emphasized does not appear in any of the statutes with reference to the appointments now before the court. The addition of this special clause indicates it was deemed necessary to invest this authority in the appointee in place of the cloak of confirmation.

In re Advisory Opinion to Governor, 1971, Fla., 247 So.2d 428, concludes the Governor may recall an appointment prior to confirmation by the Senate, as

> "the only appointments over which the Senate has confirmation jurisdiction are those submitted by you and those made by your predecessor and not recalled by you. Upon your recalling any of the appointments the confirmation jurisdiction of the Senate ceases".

As indicated above, the courts are divided on this question, McChesney v. Sampson, 232 Ky. 395, 23 S.W.2d 584, holding the Governor could not withdraw the appointment for the reason it concluded the appointee was fully placed in office by the appointment. See also State ex rel. Todd v. Essling, 1964, 268 Minn. 151, 128 N.W.2d 307; State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625, which quoted from McBride v. Osborn, supra, that "'when the (Senate) has acted favorably * * * the appointment is final and complete'"; State ex rel. Reynolds v. Smith, 22 Wis.2d 516, 126 N.W.2d 215, and Thorne v. Squier, 264 Mich. 98, 249 N.W. 497, 89 A.L.R. 126 with Annot. at 132.

Defendants claim that it is the duty of the Governor, not the Secretary of State, to communicate appointments to the Senate; that Governor Farrar officially transmitted defendants' appointments to the "Legislature" and Governor Kneip did not formally notify the Senate of the withdrawal. The record is that Governor Farrar read a message and Governor Kneip took the oath of office as Governor in the Rotunda of the Capitol Building all on January 5, 1971, at 12 m. Whether former Governor Farrar was then Governor may be uncertain,[7] but, passing that question,

7. On November 8, 1970, Governor-elect Kneip took oath as Governor, which oath was filed with the Secretary of State on November 9, 1970.

neither the message [8] nor defendants' appointments were then formally read or "officially" given to the Senate, as defendants claim, until January 19, 1971. This was the first date the Senate could legally meet. Art. III, § 7, S.D.Const., supra.

[4] Before that, on January 11, 1971, Governor Kneip had officially withdrawn the defendants' appointments by filing letters to that effect with the Secretary of State. That is the place appointments are required to be filed. SDCL 3–4–6 and 1–8–1.[9] As the Legislature was not in session until January 19, 1971, the office of the Secretary of State was the only place to file any of the appointments. We are therefore concerned with an appointment made prior to the time it was forwarded to the Senate. At the time the Secretary of State forwarded the Governor Farrar appointments to the Senate the Kneip withdrawals were in the same official files as the Farrar appointments. If it was her duty to forward the message and appointments to the Senate, it was her duty to forward all of the official communications pertaining to the appointments. Her duty was an administrative one and she was not authorized to make a decision as to their legal effect. See State ex rel. Coon v. Morrison, 61 S.D. 339, 249 N.W. 318. This apparent oversight cannot result in the award of office to one person over that of another claimant. The Senate could take official notice of the facts relative to the appointments of persons to an office requiring its confirmation, State ex rel. Krebs v. Halladay, supra, and were bound to take notice of the complete official record thereof.

[5] Claim is made plaintiffs are chargeable with laches and unreasonable delay in commencing their action; that they are estopped from asserting their cause of action and have abandoned their right to the offices. The evidence shows plaintiffs appeared at one or more meetings of the Regents in January and February 1971, and made statements they were there "to continue (their) membership on the Board". The Board, however, refused to recognize them as such and voted to seat defendants as members at one meeting and refused to reconsider its action at a later meeting. That record is the reverse of abandonment, as plaintiffs affirmatively asserted their rights as members. It was not necessary that they continue to attend every meeting

8. Our search has found the following mention of messages by the Governor to the Legislature:
Art. IV, § 4, S.D.Const., directs that "The Governor * * * shall, at the commencement of each session, communicate to the Legislature by message, information of the condition of the state, and shall recommend such measures as he shall deem expedient."
Art. IV, §§ 9 and 10 of our Constitution outlines the procedure for the Governor to approve a bill pased by the Legislature or object to it and refuse or fail to sign it or some part of it.
SDCL 4–7–12 states "the outgoing Governor shall deliver the budget report to the Legislature with his message * * *."
SDCL 3–8–1.10 provides "The Governor may include, in the budget next transmitted by him to the Legislature * * * his own recommendations with respect to the rates of pay which he deems advisable," etc.

9. SDCL 1–8–1: "It is the duty of the secretary of state:
(1) To keep a register of official acts of the Governor to which attestation over his signature and the great seal is required;
(2) To affix the great seal, with his attestation, to all commissions, pardons, and other public instruments to which the signature of the Governor is required * * *.
(4) To receive, file, and keep on file any document * * * which the law requires to be filed in his office."
In addition to the letters appointing defendants as Regents, the Governor signed and the Secretary of State attested and affixed the seal of the State to "commissions" as Regents issued to defendants.

in view of the two votes and one member's statement the "issue is dead." No grounds for estoppel appear nor do we view there was unreasonable delay or laches.

The questions of vacancies and of the right of plaintiffs to remain in office until their successors are duly qualified requires discussion of SDCL 13–49–5. That section provides:

> "The Governor shall not have power to fill any vacancies caused by the refusal of the senate to confirm, nor vacancies caused by his own neglect to nominate to the senate in time for confirmation."

The Senate did not refuse to confirm the appointments it considered; it voted to confirm them, though as we conclude defendants' appointments had previously been withdrawn; therefore, that phrase does not apply to the situation here presented. Nor were the vacancies caused by Governor Kneip's neglect to nominate to the Senate within the "time for confirmation" as SDCL 13–49–3 allowed the Governor until February 1, 1971, to make the appointments and the Senate had on January 19, 1971, the first day of its session, confirmed defendants' appointments. It would have been an idle act for the Governor to have called on the Senate to confirm the appointments or nominations of plaintiffs as it had confirmed others for the offices involved. It is a maxim the law does not require idle acts. Magowan v. Groneweg, 16 S.D. 29, 91 N.W. 335.

[6] A judgment will be entered declaring plaintiffs are entitled to be seated as members of the Board to hold office until their successors shall be appointed, confirmed by the Senate and duly qualified.

HANSON and WOLLMAN, JJ., concur.

WINANS, J., dissents.

WINANS, Judge (dissenting).

I am in dissent. The reason for my dissent will be as tersely stated as I know how to write. The Governor of this state upon the expiration of the terms of appointment of the plaintiffs to the Board of Regents, except for their holdover rights, appointed each of the defendants to the Board of Regents for a term of six years, such term to be effective January 1, 1971 and to continue until January 1, 1977 or until their successors were appointed and qualified, subject to the confirmation of the state Senate. All of the appointive procedures provided for by the laws of this state and the Constitution were explicitly followed without any deviation. Each of the defendants took the oath of office required by statute which oaths were properly filed as required by law. The appointments were confirmed by the Senate, also an act provided for by law. After the appointments and the filing of the oaths and before the confirmation the Governor attempted by a letter addressed to the Secretary of State to withdraw the appointments which act is nowhere authorized by any law, statute or constitution of this state. When the Governor exercised his power of appointment and the defendants by filing their oaths accepted the appointments, the appointive act was complete, and as provided by law they took their offices. The only authority that could terminate their right to these offices was the Senate. They saw fit to confirm the appointments.

State ex rel. Kriebs v. Halladay, 52 S.D. 497, 219 N.W. 125, cited in the majority opinion, is not authority for the position taken by the majority opinion. Even the very quote as shown in the opinion admits that the appointment of Halladay remained in force until it was acted on by the Senate. The Halladay case does not hold the appointment could be revoked, once made, and after the oath had been properly taken and filed. Halladay's appointment was confirmed by the Senate and the appointment became complete.

I quote introductory comments to the annotations found in 89 A.L.R. 135, as follows:

> "At first sight, it would seem entirely reasonable and in accord with public policy to allow the appointive power the privilege of reconsideration. From the point of view of the one appointed to the

office, however, to permit such reconsideration, after the power of appointment has been completely and finally exercised in the manner prescribed by law and the title to the office has become fixed, is to take from him a vested right. Also, from the point of view of stability and certainty in the administration of public affairs, it is desirable that there should be some point of time at which an appointment to office becomes finally and irrevocably fixed. As said in the famous case of Marbury v. Madison (1803) 1 Cranch (U.S.) 137, 2 L.Ed. 60: 'Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised.'

Although there are circumstances under which an appointment to office may be reconsidered and revoked, it may be stated as a general rule that an appointment once made is irrevocable and not subject to reconsideration. This view represents the great weight of authority."

1 and 2 from the Syllabus of Barrett v. Duff fully supported by the text, 1923, 114 Kan. 220, 217 P. 918, states:

"1. * * * The executive power of the Governor is a continuing power, never ending, and not broken by succession.

2. * * * Where the appointment to an office is vested in the Governor, with the advice and consent of the Senate, and the term of the incumbent expires during a recess of the Legislature, and the Governor appoints a successor to the office, *held*, that the appointment vests in the appointee a right to hold for his full term, subject only to be defeated by nonconcurrence or rejection of the Senate."

In State ex rel. Todd v. Essling, 1964, 268 Minn. 151, 128 N.W.2d 307, at page 311, it is stated,

"It appears well settled since Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60, that with respect to an office having a fixed term where the appointee is not removable at will, when the executive power of appointment has been completely exercised, the authority of the executive to remove or rescind the appointment ceases. This rule is founded upon the principle that where the appointing authority has done everything he is required to do to make a valid and complete appointment, he has fully exercised and exhausted his power over the appointee and a recall of the appointment would operate as a removal from office in violation of the appointee's right to continue in office subject only to a rejection by the senate or removal for cause."

Other authority can be given for the position I take but inasmuch as this is only a dissent and the law will become fixed and determined as stated by the majority, I refrain from further comment.

There is another statement in the majority opinion on which I must comment briefly. The majority opinion, after quoting SDCL 13–49–5 and 13–49–3, states: "It would have been an idle act for the Governor to have called on the Senate to confirm the appointments or nominations of plaintiffs as it had confirmed others for the offices involved." The opinion, however, holds this confirmation was not valid because the Governor had exercised what the opinion holds was his right of withdrawal of the appointments of the defendants prior to the act of confirmation. It seems to me under the majority holding the Governor had a right to submit to the Senate for confirmation such appointments as he desired and withdraw them and resubmit all before the act of confirmation. Under my theory which holds the Senate had the right to confirm, as the Governor had no right to withdraw the appointments once made, it would have been an idle act for him to submit appointments. Furthermore, under the majority opinion herein the Governor could have created a vacancy any

time he wished, as is plainly shown by the stipulation of facts before this Court to the following effect:

"That in the event Burke and Witt were called to testify before a referee, they would testify that on or about January 11, 1971, at the request of Governor Kneip, they conferred with the Governor in his office at the State Capitol, that they were advised by the Governor that he was withdrawing the appointments of Schmidt and Varilek, and he wanted Burke and Witt to continue to serve as Regents, that he could not assure them how long he wished them to serve but he wished them to serve for at least one year until the Master Plan, then under consideration by the Board, had been determined, and that in accord with his practice with department heads that they leave letters of resignation, annexed hereto as Exhibits S and T, with the Governor, they so did."

I would hold that the defendants, Schmidt and Varilek, are the duly appointed, qualified, confirmed and legally acting members of the Board of Regents from January 2, 1971, the date they qualified.

STATE of South Dakota, Plaintiff-Respondent,

v.

Denver KINDVALL, Defendant-Appellant.

No. 10811.

Supreme Court of South Dakota.

Nov. 4, 1971.

Defendant was convicted in the Circuit Court of Miner County, George W. Wuest, J., of murder, and he appealed. The Supreme Court, Rentto, Associate Judge, held, inter alia, that though sole expert witness at murder trial testified he had been unable to determine whether defendant knew right from wrong at the time of the killing, his testimony that it was possible for people with defendant's schizophrenic condition, paranoid type, to know the difference between right and wrong, together with evidence as to the killing, testimony of persons who had contact with defendant the following afternoon, and testimony as to defendant's activities the previous evening, was sufficient to warrant finding of sanity.

Affirmed.

1. Criminal Law ⇐331

While the state must prove beyond reasonable doubt that accused was mentally capable of the criminal intent required to constitute the crime charged, it is not necessary for the state in the first instance, in its case in chief, to prove the sanity of the accused; as sanity and criminal responsibility are rebuttably presumed, evidence of the contrary is required to make an issue.

2. Homicide ⇐237

Though sole expert witness at murder trial testified he had been unable to determine whether defendant knew right from wrong at the time of the killing, his testimony that it was possible for people with defendant's schizophrenic condition, paranoid type, to know the difference between right and wrong, together with evidence as to the killing, testimony of persons who had contact with defendant the following afternoon, and testimony as to defendant's activities the previous evening, was sufficient to warrant finding of sanity. SDCL 22-3-1(4).

3. Criminal Law ⇐570(1)

In addition to the opinion evidence of experts and laymen, a defendant's mental condition at the time of the crime may be proved by circumstantial evidence, including the acts, conduct and declarations of the defendant, both prior and subsequent to

field v. State, 160 So.2d 706 (Fla.1964), text 710.

Having considered the record and evidence in accord with the mandate of Fla. Stat. § 924.32(2), F.S.A., we conclude that the conviction was justified, supported by the evidence and free from error. The conviction is affirmed.

It is so ordered.

ROBERTS, C. J., ERVIN, BOYD and DREW (Retired), JJ., and MASON and HALL, Circuit Judges, concur.

In re ADVISORY OPINION TO the GOVERNOR.

No. 41069.

Supreme Court of Florida.

May 7, 1971.

Questions were propounded by the governor to the Justices of the Supreme Court relating to the nature and effect of ad interim appointments made by governor's predecessor which were pending before the state senate. The Justices of the Supreme Court were of the opinion that the governor has no right to remove an appointee during the ad interim term except for good cause, but the governor does have executive power to initiate new appointments for the unexpired term and submit the same to the state senate during its regular session, and that the governor has power to request the state senate to return certificates of ad interim appointments or other evidence of such appointments pending before the senate, and to make his own appointments for the unexpired terms and send them to the senate for confirmation.

Questions answered.

1. States ⇐51

In relation to the term of office of an ad interim appointment, should the state senate reject the appointment and commissioning of the appointee, the office forthwith becomes vacant, and if the senate fails to act on the appointment and commission during the session in which it is required to act, the appointee serves only until last day of the legislative session which takes no action on the appointment. F.S.A. § 112.071(1) (c).

2. States ⇐46, 52

Governor has no right to remove an appointee during the ad interim term except for good cause, but the governor does have executive power to initiate new appointments for the unexpired term and submit the same to the state senate during its regular session. F.S.A.Const. art. 4, § 1(c, f); F.S.A. §§ 112.071, 114.04.

3. States ⇐46

Governor has power to request the state senate to return certificates of ad interim appointments or other evidence of such appointments pending before the senate, and to make his own appointments for the unexpired terms and send them to the senate for confirmation. F.S.A.Const. art. 4, § 1(c, f); F.S.A. § 114.04.

Edgar M. Dunn, Jr., Gen. Counsel for Governor Reubin O'D. Askew.

S. Curtis Kiser, Dunedin, for respondent.

SUPREME COURT OF FLORIDA
TALLAHASSEE
32304

May 7, 1971

Honorab'e Reubin O'D. Askew
Governor of Florida
The Capitol
Tallahassee, Florida 32304

Dear Governor:

We have the honor to acknowledge your communication of April 26, 1971, requesting our opinion upon a question affecting your executive powers and duties as authorized by Section 1(c) of Article IV, Florida Constitution [F.S.A.].

Omitting the formal parts, your letter reads as follows:

"It is my constitutional duty to fill by appointment vacancies in certain state and county offices. Section 1(f) of Article IV of the Florida Constitution provides in part:

"'(f) When not otherwise provided for in the constitution, the governor shall fill by appointment any vacancy in a state or county office *for the remainder of the term* of an appointive office. * * *' (Emphasis added)

"In 1970, the Florida Legislature enacted Chapter 70-395 [70-385], Laws of Florida, which provides in part:

"'114.04 Filling vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a state, district, or county office (other than a member or officer of the legislature), the governor shall fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law. *In cases requiring the confirmation or advice and consent of the senate, the person so appointed may hold such office as provided in section 112.071.*' (Emphasis added)

"In 1970, the Legislature enacted Chapter 70-439, Laws of Florida, which provides in part:

"'(1) Whenever an office created by the legislature or provided for by the constitution is or becomes vacant and when the appointment is required by the constitution or statute to be confirmed by the state senate and such office is to be filled by the governor the following procedure shall be followed, unless the state constitution requires otherwise:

* * * * * *

"'(b) If a vacancy occurs when the senate is not in session or in other than regular session, the governor shall notify the department of state of the said appointment, whereupon the department shall prepare and countersign a commission for the term of the vacancy and deliver the same to the governor for his signature and delivery to the appointee. However, said appointment and commission shall be dependent upon the approval by the senate at its next ensuing regular session. The department of state shall then forthwith notify the secretary of the senate of the appointment made by the governor, and the secretary of the senate shall so advise the president, president pro tem and each member of the senate.

"'(c) Should the senate reject said appointment and commissioning of the appointee, the said office shall forthwith become vacant. In such event, the appointee whose appointment is rejected by the senate shall not be eligible for appointment between the time of such rejection and the beginning date of the next ensuing regular session of the legislature. If the senate fails to act on said appointment and commission during the session in which it is required to act, the appointee shall serve only until the last day of the legislative session

which takes no action on sa.d appointment. If the senate does confirm the appointment, the appointee shall serve for the full term for which the office was created.

* * * * * *

"'(2) The length of term of the office shall be as set forth in the statute, subject to the limitations of the state constitution. If the statute does not specify whether an appointment made between sessions of the legislature shall be for the full term thereof, said appointment shall be for the full term of the office created if the senate confirms the said appointment.' (Section 112.071–1970 Supp. to F.S. (1969) [F.S.A.])

"The then Governor of the State of Florida, the Honorable Claude R. Kirk, Jr., took action to appoint persons to vacancies in certain state and county offices. These appointments have been processed in accordance with the procedures set forth in the above-quoted statutes. I am advised that the Department of State has notified the Secretary of the Senate of appointments made by former Governor Kirk, but that the Senate has not confirmed or advised and consented to any of such appointments.

"For the purpose of this request, please assume that the appointments now pending before the State Senate relate to: (a) offices which are appointed state or county offices within the meaning of Article IV, Section 1(f), Florida Constitution, (b) offices which require appointment by the Governor and the confirmation of or advice and consent to such appointment by the Florida Senate, (c) offices which have a fixed term, (d) offices which became vacant when the Senate was not in regular session.

"In view of the provisions of the Constitution, laws and facts which I have heretofore related, I am in doubt as to the nature and effect of the ad interim appointments which were made by my predecessor and which are now pending before the Florida Senate. I, therefore, have the honor to request your written opinion on the following questions:

"1. What is the term of office of these ad interim appointments?

"2. If your answer is that the ad interim appointments are made only until the last day of the legislative session which takes no action on such appointments, do I have the executive power to avoid or ignore such executive appointments and would I have the executive power to initiate new appointments and submit the same to the Florida Senate during this regular session?

"3. If your answer is that I have the executive power to initiate new appointments, do I have the power to request the State Senate to return these certificates of ad interim appointments or other evidence of such appointments now pending before that body?"

Our advisory reported in 229 So.2d 229 (Fla.1969) did not relate to appointments requiring the confirmation or advice and consent of the Senate, and therefore not involved here.

Prior to its amendment by Ch. 70–395 [70–385], Laws of Florida, Fla.Stat. § 114.04, F.S.A., reads as follows:

"Filling vacancies.—In all such cases, and in all other cases in which a vacancy may occur, if the office be a state, district or county office (other than a member or officer of the legislature), the governor shall fill such office by appointment, and the person so appointed shall be entitled to take and hold such office until the same shall be filled by an election as provided by law, and *in cases requiring the confirmation or the advice and consent of the senate, the person so appointed may hold until the end of the next ensuing session of the senate unless an appointment be sooner made and confirmed and consented to by the senate.*" (Emphasis supplied)

When a vacancy occurs in an office which must be filled through appointment by the Executive and confirmation by the Senate, two terms arise: The ad interim term runs from the date of the first appointment until the end of the next ensuing session of the Senate unless confirmation is sooner made by the Senate of an appointee for the unexpired portion; the next term is the *unexpired term* of the office which begins upon appointment by the Governor and confirmation by the Senate.

The advisory reported in 147 Fla. 157, 2 So.2d 378 (1941) discusses an ad interim appointment and a subsequent appointment for confirmation by the Senate. We there said:

"When an ad interim appointment of a Circuit Judge is legally made by the Governor to hold until the end of the next session of the Senate, it is the duty of the Governor to submit to the Senate at its next session an appointment of a Circuit Judge for confirmation to fill such office under Sections 43 and 45, Article V of the Constitution, for the term contemplated by the Constitution. The ad interim appointment and the subsequent appointment for confirmation by the Senate may be by succeeding Governors. *In the latter case the incumbent Governor makes an appointment, and does not merely transmit to the Senate for confirmation the name of the Judge who had been appointed ad interim.*" (Emphasis supplied)

In State ex rel. Wynn v. Squarcia, 66 So.2d 263 (Fla.1953), original quo warranto proceedings, the respondent Squarcia was appointed after the Senate adjourned in 1951. During the 1953 session of the Legislature a successor governor appointed relator Wynn to the office for the remainder of the term. Wynn's appointment was submitted to the Senate and confirmed. Both relator Wynn and respondent Squarcia claimed title to the office. Respondent Squarcia contended that the Senate neither confirmed nor rejected his appointment, since it was not given an opportunity to do so by the successor governor, and he therefore had a lawful right to continue in the office in the absence of a rejection by the Senate. He further contended that no vacancy existed at the time the successor governor appointed Wynn, so the subsequent confirmation by the Senate was void. These contentions were not sustained, this Court saying:

"[T]he provisions of Section 7 of Article IV that a commission to fill a vacancy shall be 'for the unexpired term' may not be applied in the instant case, since Section 114.04, Florida Statutes, specifically provides a 'mode * * * for filling such vacancy', to wit: '* * in cases requiring the confirmation or the advice and consent of the senate, the person so appointed may hold until the end of the next ensuing session of the senate unless an appointment be sooner made and confirmed and consented to by the senate.'

"Since then, the Governor was not exercising his *original* power of appointment under Section 33.03, but was proceeding under the powers granted by Article IV, Section 7, as limited by Section 114.04, supra, he was authorized to appoint only in the manner specified therein, to wit: his appointment was required to be limited 'until the end of the next ensuing session of the senate unless an appointment be sooner made and confirmed and consented to by the senate.'

"As illustrative of the application of the rule as to the exercise of the Governor's power to fill vacancies in offices requiring the confirmation of the Senate, at a time when the Senate is not in session, see the following cases: Simonton v. State ex rel. Turman, 44 Fla. 289, 31 So. 821 (as to county solicitors); In re Advisory Opinion to Governor, 45 Fla. 154, 34 So. 571 (as to circuit judges and judges of criminal courts of record);

In re Advisory Opinion to Governor, 137 Fla. 298, 188 So. 218, 219 (as to county solicitors); In re Advisory Opinion to Governor, 147 Fla. 148, 2 So.2d 372 (as to assistant state attorneys); Advisory Opinion to Governor, 147 Fla. 157, 2 So.2d 378 (as to newly created offices of circuit judges in Dade County.)

"For the reasons stated, it must be held that the commission of the respondent was properly limited, as provided by Section 114.04, supra; that upon the appointment by the Governor and confirmation of the relator as Judge of the Civil Court of Record of Dade County, the respondent's *ad interim* appointment terminated and expired; and that the relator is entitled to the title and emoluments of the office and to exercise the duties thereof."

In the advisory reported in 171 So.2d 539 (Fla.1965), this Court said:

"In the event of a vacancy at a time when the state Senate is not in session, *it is your executive power and duty to fill the vacancy by appointment, and for an ad interim term only, expiring not later than the last day of the next ensuing session of the state Senate.* In Advisory Opinion to Governor (Martin) reported in 93 Fla. 1024, 113 So. 115, the Justices said:

"'In an advisory opinion to the Governor, printed in 45 Fla. at page 154, and reported also in 34 So. at page 571, the Justices of this court expressed the view that, when a vacancy occurs in the office of a circuit judge during the recess of the Senate, the Governor properly fills such vacancy by appointment to hold no longer than the end of the next ensuing session of the Senate, and when such next ensuing session of the Senate convenes it is the duty of the Governor to submit appointees to fill such vacancies to the Senate for confirmation *for the unexpired term.*' (Italics supplied)

"In the exercise of freedom of choice the Governor is not required to send to the Senate the name of the ad interim incumbent but may, if he deems it in the best interest of the public welfare, send the name of a new appointee for the unexpired portion of each of the cycles." (Emphasis supplied)

Under our decisions prior to the 1970 amendments, it is clear that the incumbent Governor was not required to submit the name of the ad interim appointee. He had a right to make his own appointment and transmit the name of his appointee to the Senate for confirmation.

Chapter 70–385, Laws of Florida, amended Fla.Stat. § 114.04, F.S.A., so that the following words in old § 114.04,

"[I]n cases requiring the confirmation or the advice and consent of the senate, the person so appointed may hold until the end of the next ensuing session of the senate unless an appointment be sooner made and confirmed and consented to by the senate,"

were changed to read,

"In cases requiring the confirmation or advice and consent of the senate, the person so appointed may hold such office as provided in § 112.071."

Fla.Stat. § 112.071, F.S.A., referred to above, was enacted by Chapter 70–439. Subsection (1) of this statute states the legislative intent in these words:

"(1) Whenever an office created by the legislature or provided for by the constitution is or becomes vacant and when the appointment is required by the constitution or statute to be confirmed by the state senate and such office is to be filled by the governor *the following procedure shall be followed*, unless the state constitution requires otherwise." (Emphasis supplied)

Clearly, it was the intent of the Legislature to establish a procedure and not to change the substantive law relative to ad interim appointments.

Subsection (1) (b), of Chapter 70–439, quoted in your request (Fla.Stat. § 112.071 (1) (b)) prescribes the procedure to be followed if a vacancy occurs when the Senate is not in session. The Department of State issues the commission for the "term of the vacancy," but the "appointment and commission shall be dependent upon the approval by the Senate at its next ensuing regular session." This conforms with the substantive law expressed in our prior decisions.

When a vacancy occurs while the Senate is in session and the appointee must be confirmed by the Senate, the commission given prior to confirmation is for the "ad interim term" and, upon confirmation by the Senate, the commission is for the "unexpired term." The "unexpired term" is a completely new and different term from the "ad interim term." Although, under the statute, an officer duly appointed for the ad interim term cannot be removed during such term except for good cause, the name of any other qualified person to fill the unexpired term may be submitted to the Senate for confirmation. Until confirmed by the Senate, the Governor may recall any name and substitute another.

The Chief Executive, selected by the people, is charged with the responsibility of completing the program he presented to the electorate while seeking the office. It is important that he be allowed to exercise a freedom of choice in selecting those appointees whom he feels are qualified, as the people look to him for leadership in the operation of their government. Compare State ex rel. Investment Corporation of South Florida v. Harrison, 247 So.2d 713 (Case No. 40,869) (opinion filed April 14, 1971).

[1] In answer to your first question as to the term of office of an ad interim appointment, should the Senate reject the appointment and commissioning of the appointee, the office forthwith becomes vacant. If the Senate fails to act on the appointment and commission during the session in which it is required to act, the appointee serves only until the last day of the legislative session which takes no action on the appointment. See Fla.Stat. § 112.071(1) (c), F.S.A.

[2] In answer to your second question, you have no right to remove an appointee during the *ad interim term* except for good cause. However, you have the executive power to initiate new appointments for the unexpired term and submit the same to the Florida Senate during this regular session. Upon your doing so, the only appointments over which the Senate has confirmation jurisdiction are those submitted by you and those made by your predecessor and not recalled by you. Upon your recalling any of the appointments the confirmation jurisdiction of the Senate ceases and that body is under a lawful obligation to return them to you.

In answer to your third question, you have the power to request the State Senate to return the certificates of ad interim appointments or other evidence of such appointments now pending before that body, and to make your own appointments for the unexpired terms and send them to the Senate for confirmation.

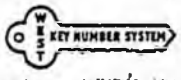
In summary, we have advised you that you have the power to fill a vacancy by appointment in accordance with law, and, if such appointment is made when the Senate is not in session, the maximum term that it can be made for is the last day of the next ensuing session of the State Senate, or until a successor is appointed by you and confirmed by the next ensuing session of the State Senate, whichever condition occurs first; that the appointments by your predecessor expire on the last day of this session of the State Senate, or when a successor shall be appointed and confirmed by the State Senate, whichever condition occurs first, and any language in a commission purported to extend an appointment beyond such date is ineffectual and void; that in making appointments you will not be required to submit for con-

firmation the names of the incumbents holding office under ad interim appointments.

Respectfully yours,

B. K. ROBERTS,
Chief Justice

RICHARD W. ERVIN
VASSAR B. CARLTON
JAMES C. ADKINS, Jr.
JOSEPH A. BOYD, Jr.
DAVID L. McCAIN
HAL P. DEKLE
Justices



[3]

THE FLORIDA BAR, Petitioner,

v.

Leon S. HELLER, Respondent.

No. 39983.

Supreme Court of Florida.

May 5, 1971.

Proceeding on complaint from the Florida bar which charged respondent with unauthorized practice of law. The Supreme Court held that activities of respondent, who was not a member of the bar, in searching public records for lands and money which may have been abandoned, or unclaimed, by true owners, locating missing heirs and offering to recover funds, upon agreement to share the proceeds of the recovery, constituted unauthorized practice of law and respondent would be enjoined from offering, proposing or soliciting any other person, firm or corporation, having, or appearing to have any claim, or interest, in or to lands, properties or monies in Florida, or engaging in any transaction by which respondent is to recover lands, properties or monies for another for compensation without aid of a licensed member of the bar.

Order in accordance with opinion.

Attorney and Client ⇐11(6)

Activities of respondent, who was not a member of the bar, in searching public records for lands and money which may have been abandoned, or unclaimed, by true owners, locating missing heirs and offering to recover funds, upon agreement to share the proceeds of the recovery, constituted unauthorized practice of law.

A. Ward Wagner, Jr., West Palm Beach, and Richard C. McFarlain, Tallahassee, for The Florida Bar, petitioner.

Leon S. Heller, in pro. per.

PER CURIAM.

This cause is before us on the Petition of the Florida Bar charging respondent with the unauthorized practice of law, this Court's order to show cause, Respondent's response thereto, and the report of the referee, which report is as follows:

"TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF FLORIDA:

"Pursuant to the Order dated October 13, 1970, appointing me Referee in this cause, a hearing was had before me on the 5th day of February, 1971, as reported in the Court Reporter's transcript herewith transmitted to you, including such exhibits as were filed in evidence.

"The evidence heard by me and thus transmitted to you supports the following conclusions:

"The Respondent, LEON S. HELLER, is a man 79 years of age who resides in Fort Lauderdale. He claims to have an office in Lake Worth, Florida, and in several other cities in Florida. His activities extend throughout many coun-

ute amendments to the bill,[2] indeed was to relegate the employer to (1) complaints to the police, and (2) his common law remedies—even when those recourses might, under the equity precedents, technically be regarded as "inadequate".

It is disappointing that the Supreme Court of California, after more than half a century and notwithstanding the recent, plausibly incompatible, California legislative history, now appends this decision to the judicial history that Messrs. Frankfurter and Greene in 1930 assailed so graphically and devastatingly in their book *The Labor Injunction.* My opinion is that the court th s appears needlessly regressive. (Cf. Christ, Is the Norris Act Constitutional? (1932) 19 Va.L.Rev. 51; Shatz, *Picketing Injunctions in California* . . . (1977) 28 Hast.L.J. 801, 836: "It would be anomalous indeed to conclude that the legislature, after reciting a litany of complaints as to the present injunction practice, enacted a statute which codified the status quo. The broader 'union' interpretation receives some further support from what little legislative history there is." Also cf. *Wilson & Co. v. Birl* (3d Cir. 1938) 105 F.2d 948 and *Alliance Auto Service v. Cohen* (1941) 341 Pa. 283, 19 A.2d 152.)

I concur in the majority's disposition of this proceeding (Part 4 of Justice Tobriner's opinion). I have stated my separate views, though, because I do not believe that the superior court has been correctly instructed regarding its proposed new proceeding.

2. For comment on "the final, hectic days of that legislative session" and the likely impact on last-minute amendments see *People v. Tanner* (1979) 24 Cal.3d 514, 542, 156 Cal.Rptr. 450, 467, 596 P.2d 328, 345.

160 Cal.Rptr. 760

In re the Petition of the COMMISSION ON the GOVERNORSHIP OF CALIFORNIA.

Edmund G. BROWN, Jr., as Governor, etc., et al., Petitioners,

v.

Mike CURB, as Lieutenant Governor, etc., et al., Respondents.

S.F. 24021, S.F. 24029.

Supreme Court of California, In Bank.

Dec. 27, 1979.

The Commission on the Governorship filed a petition concerning authority of Lieutenant Governor to act while the Governor was out of state. Combined therewith was a petition by the Governor and his appointee to judgeship on Court of Appeal seeking writ of mandate, prohibition and declaratory relief. The Supreme Court, Manuel, J., held that: (1) although dispute as to Governor's absence was a matter with respect to which the Commission had exclusive standing, once the question was properly raised, the court could concurrently consider issues presented by the Governor's petition; (2) Lieutenant Governor may act on the Governor's physical absence from the state; (3) Lieutenant Governor's appointment of presiding justice of Court of Appeal during Governor's absence was valid; and (4) on his return the Governor had authority to withdraw the appointment until the confirmation of appointment became effective by action of Commission on Judicial Appointments.

Peremptory writ of mandate issued.

Newman, J., filed concurring opinion.

1. States ⇐42

Absence from the state is a "temporary disability" within meaning of constitutional

nor during governor's absence from the state. West's Ann.Const. art. 5, § 10.

10. Judges ⇐3
States ⇐42

As acting Governor, the Lieutenant Governor is free to act on whatever matters he determines need attention during the Governor's absence; hence, Lieutenant Governor's appointment of presiding justice of Court of Appeal while Governor was out of state was valid. West's Ann.Const. art. 5, § 10.

11. Officers and Public Employees ⇐13

Uncompleted appointments are subject to withdrawal.

12. Judges ⇐3

Transmittal of an appointment to the Commission on Judicial Appointments completes the gubernatorial action necessary to an appellate judicial appointment. West's Ann.Gov.Code, §§ 1340(d), 68121; West's Ann.Const. art. 6, § 16(d).

13. Judges ⇐3

Even though submission for confirmation by Commission on Judicial Appointments completes the gubernatorial action necessary for an appointment to an appellate judgeship, it does not complete the appointive process or confer even an interim right to assume office. West's Ann.Gov. Code, §§ 1340(d), 68121; West's Ann.Const. art. 6, § 16(d).

14. Judges ⇐3

Although Lieutenant Governor had authority to appoint presiding justice of Court of Appeal while the Governor was out of state, the Governor, on his return, had authority to withdraw the appointment until the appointment became effective on confirmation by Commission on Judicial Appointments. West's Ann.Gov.Code, §§ 1340(d), 68121; West's Ann.Const. art. 5, § 10; art. 6, § 16(d).

Bion M. Gregory, Legislative Counsel, and Edward F. Nowak, Principal Deputy Legislative Counsel, Sacramento, for petitioner in No. 24029.

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No appearance for other respondents in No. 24021.

Ernest Duncan, Alhambra, as amicus curiae on behalf of respondents in No. 24021.

MANUEL, Justice.

In these consolidated cases we examine the gubernatorial powers of the Lieutenant Governor during the Governor's absence from the state and the powers of the Governor to rescind or revoke prior acts of the Lieutenant Governor. The dispute involves the Lieutenant Governor's appointment of a presiding justice of the Court of Appeal while the Governor was out of the state and the Governor's withdrawal of that appointment and substitution of his own appointee after his return to the state. As hereafter developed, we conclude that the Lieutenant Governor has authority to exercise all gubernatorial powers of appointment while the Governor is physically absent from the state and that the Governor has authority to withdraw the appointment until the confirmation of appointment becomes effective.

Article V, section 10 of the Constitution provides in pertinent part: ". . . The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office." The section also declares that this court shall have "exclusive jurisdiction to determine all questions arising under this section," and confers exclusive standing to raise questions of temporary

CORRECTION

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TO ASSURE LEGIBILITY

ute amendments to the bill,[2] indeed was to relegate the employer to (1) complaints to the police, and (2) his common law remedies—even when those recourses might, under the equity precedents, technically be regarded as "inadequate".

It is disappointing that the Supreme Court of California, after more than half a century and notwithstanding the recent, plausibly incompatible, California legislative history, now appends this decision to the judicial history that Messrs. Frankfurter and Greene in 1930 assailed so graphically and devastatingly in their book *The Labor Injunction*. My opinion is that the court thus appears needlessly regressive. (Cf. Christ, Is the Norris Act Constitutional? (1932) 19 Va.L.Rev. 51; Shatz, *Picketing Injunctions in California* . . . (1977) 28 Hast.L.J. 801, 836: "It would be anomalous indeed to conclude that the legislature, after reciting a litany of complaints as to the present injunction practice, enacted a statute which codified the status quo. The broader 'union' interpretation receives some further support from what little legislative history there is." Also cf. *Wilson & Co. v. Birl* (3d Cir. 1938) 105 F.2d 948 and *Alliance Auto Service v. Cohen* (1941) 341 Pa. 283, 19 A.2d 152.)

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Peremptory writ of mandate issued.

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1. States ⇐42

Absence from the state is a "temporary disability" within meaning of constitutional

provision that the lieutenant governor shall act as governor during the impeachment, absence from the state, etc., of the governor. West's Ann.Const. art. 5, § 10.

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

2. Courts ⇐208

Any dispute as to the governor's absence from the state for purpose of determining authority of lieutenant governor to act as governor is a matter with respect to which the Commission on the Governorship has exclusive standing before the Supreme Court. West's Ann.Const. art. 5, § 10; West's Ann.Gov.Code, §§ 12070–12076.

3. Courts ⇐208

Once issue with respect to power of lieutenant governor to act in absence of the governor is properly raised by Commission on the Governorship, the Supreme Court is not prevented from concurrently considering pleadings and arguments from interested persons on matters within the scope of the Commission's questions, and hence, filing of Commission's petition concerning power of lieutenant governor to act during governor's out-of-state trip permitted the court concurrently to consider similar and related issues presented by the governor's petition. West's Ann.Const. art. 5, § 10; West's Ann.Gov.Code, §§ 12070–12076.

4. Constitutional Law ⇐69
Courts ⇐208

Since Supreme Court's jurisdiction to determine authority of lieutenant governor to act as governor is exclusive, it transcends the procedural limitations on appellate courts imposed by Article VI, sections 10 and 11 and, hence, granting of relief, declaratory or otherwise, that ordinarily would be available only from trial courts may be appropriate; however, the limitation on rendering advisory opinions applies. West's Ann.Const. art. 3, § 3; art. 5, § 10; art. 6, §§ 10, 11; West's Ann.Gov.Code, §§ 12070–12076.

5. States ⇐42

Prior petition to Supreme Court by Commission on the Governorship is not a prerequisite to conferring of gubernatorial powers on the lieutenant governor in the governor's absence from the state. West's Ann.Const. art. 5, § 10; West's Ann.Gov. Code, §§ 12070–12076.

6. States ⇐42

The lieutenant governor, like any public officer with executive duties, must apply and, if necessary, interpret the law prescribing those duties as found in the Constitution, legislation, and authoritative decisions. West's Ann.Const. art. 5, § 10.

7. States ⇐42

Words "absence from the State," as used in constitutional provision that the lieutenant governor shall act as governor during governor's absence from the state does not mean effective absence but means physical nonpresence. West's Ann.Const. art. 5, § 10.

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

8. States ⇐42

Since a physically absent governor cannot act, the overriding purpose of avoiding the hiatus in the availability of executive powers requires that, during the absence, the sole entire power to act as governor be transferred to a lieutenant governor who is physically within the state. West's Ann. Const. art. 5, § 10; West's Ann.Gov.Code, §§ 12002, 12058; West's Ann.Evid.Code, § 452(c).

9. States ⇐42

Fact that in the past 16 years more than 1,400 gubernatorial actions have been taken by lieutenant governors or other acting governors during the governor's absence was evidence of a settled contemporaneous construction entitled to great weight in construing constitutional provision that the lieutenant governor shall act as gover-

nor during governor's absence from the state. West's Ann.Const. art. 5, § 10.

10. **Judges** ⇐3
States ⇐42

As acting Governor, the Lieutenant Governor is free to act on whatever matters he determines need attention during the Governor's absence; hence, Lieutenant Governor's appointment of presiding justice of Court of Appeal while Governor was out of state was valid. West's Ann.Const. art. 5, § 10.

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Even though submission for confirmation by Commission on Judicial Appointments completes the gubernatorial action necessary for an appointment to an appellate judgeship, it does not complete the appointive process or confer even an interim right to assume office. West's Ann.Gov. Code, §§ 1340(d), 68121; West's Ann.Const. art. 6, § 16(d).

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MANUEL, Justice.

In these consolidated cases we examine the gubernatorial powers of the Lieutenant Governor during the Governor's absence from the state and the powers of the Governor to rescind or revoke prior acts of the Lieutenant Governor. The dispute involves the Lieutenant Governor's appointment of a presiding justice of the Court of Appeal while the Governor was out of the state and the Governor's withdrawal of that appointment and substitution of his own appointee after his return to the state. As hereafter developed, we conclude that the Lieutenant Governor has authority to exercise all gubernatorial powers of appointment while the Governor is physically absent from the state and that the Governor has authority to withdraw the appointment until the confirmation of appointment becomes effective.

Article V, section 10 of the Constitution provides in pertinent part: ". . . The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office." The section also declares that this court shall have "exclusive jurisdiction to determine all questions arising under this section," and confers exclusive standing to raise questions of temporary

disability on "a body provided by statute." [1] Legislation creating the Commission on the Governorship (Commission) as the body having such standing (Gov.Code, §§ 12070–12076) took effect concurrently with adoption of article V, section 10 on November 8, 1966.

The salient facts are undisputed: Governor Edmund G. Brown, Jr., left California for Washington, D.C., at 10 a. m. on March 26, 1979, and returned on March 28, 1979, at 2:11 a. m., 40 hours later. On March 27, the executive assistant to Lieutenant Governor Mike Curb informed the Governor's secretary of the Lieutenant Governor's intention to appoint Judge Armand Arabian to the vacant presiding justiceship on the Court of Appeal. The executive assistant was advised that the Governor intended to appoint Justice Bernard S. Jefferson to the vacancy and that Justice Jefferson's name had already been submitted to the State Bar for evaluation. On the same date, the Lieutenant Governor appointed Judge Arabian as Presiding Justice for the Court of Appeal, Second Appellate District, Division One. On March 28, the Governor withdrew the appointment of Judge Arabian previously submitted by the Lieutenant Governor and appointed Justice Jefferson to the vacancy and at the same time appointed Judge Arleigh M. Woods as Associate Justice to fill the vacancy created by appointment of Justice Jefferson as Presiding Justice.

On May 7, 1979, Governor Brown and Justice Jefferson filed with this court a petition for writs of mandate and prohibition and for declaratory relief. Named respondents were Lieutenant Governor Curb, Judge Arabian, and the Commission on Judicial Appointments (the body with responsibility for confirming gubernatorial appointments of Court of Appeal justices). [2]

The Governor's petition prays that we direct the Commission on Judicial Appointments to act on the Jefferson appointment and that we declare that (1) no gubernatorial powers devolve on the Lieutenant Governor unless this court, on petition of the Commission, has first determined the existence of a temporary disability of the Governor, (2) the Arabian appointment is invalid because on March 27, the Governor "was not effectively 'absent from the state' within the meaning of article V, section 10, of the California Constitution," and (3) the Governor's withdrawal of the Arabian appointment prior to its confirmation was effective, leaving the Jefferson appointment the only one properly before the Commission on Judicial Appointments.

On May 21, 1979, the Commission filed a "Petition for Determination of Questions under section 10 of Article V of the California Constitution." The Commission states the constitutional (art. V, § 10) and statutory authority for its petition (Gov.Code, § 12070, et seq.),[3] recites the controversy over the conflicting appointments to a single vacancy on the Court of Appeal, urges

1. Article V, section 10 provides in full: "The Lieutenant Governor shall become Governor when a vacancy occurs in the office of Governor. [¶] The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor or of a Governor-elect who fails to take office. [¶] The Legislature shall provide an order of precedence after the Lieutenant Governor for succession to the office of Governor and for the temporary exercise of the Governor's functions. [¶] The Supreme Court has exclusive jurisdiction to determine all questions arising under this section. [¶] Standing to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute."

2. Article VI, section 16, subdivision (d) of the Constitution provides that an appointment by the Governor to fill a vacancy in a Court of Appeal "is effective when confirmed by the Commission on Judicial Appointments." The Commission on Judicial Appointments consists of the Chief Justice, the Attorney General, and, when the appointment to be considered is to a Court of Appeal vacancy, the senior presiding justice of the affected Court of Appeal. (Art. VI, § 7.)

3. The Commission, which consists of the President Pro Tem. of the Senate, the Speaker of the Assembly, the President of the University of California, the Chancellor of the California State Colleges, and the Director of Finance (Gov.Code, § 12070), "shall have exclusive authority to petition the Supreme Court to decide any questions relating to the existence of a temporary disability of the Governor" (Gov.

the importance of "the question of the power of the Lieutenant Governor to act as Governor during the physical absence of the Governor from the state," and prays that this court "determine when the Governor is absent from the state within the meaning of Section 10 of article V of the California Constitution and, in so doing, set forth standards which may be applied to facts and circumstances which may foreseeably arise in the future."

We deal first with our jurisdiction and the standing of petitioners to invoke it. Our exclusive jurisdiction to determine all questions arising under article V, section 10 is clear and unambiguous. The final sentence in the section states, however, that "[s]tanding to raise questions of vacancy or temporary disability is vested exclusively in a body provided by statute," namely, the Commission. As submitted to the Assembly by the Constitution Revision Commission, section 10 of article V provided for determining questions of vacancy and disability, but did not specify how or by whom the questions could be raised. The provision for exclusive standing in a statutory body was added to the draft on the floor of the Assembly (1 Assem.J. (1966, First Ex.Sess.) pp. 631, 705) at the request of the Office of the Governor, apparently for the purpose of forestalling frivolous or harassing attacks on the validity of gubernatorial actions.

[1–3] It is obvious that absence from the state is a temporary disability within the meaning of article V, section 10,[4] and that any dispute as to the Governor's absence from the state is a matter with respect to which the Commission has exclusive standing before us. Once the question is properly raised, however, nothing in the section's wording or aims prevents us from concurrently considering pleadings and arguments from interested persons on matters within the scope of the Commission's question.

For purposes of establishing our present jurisdiction, therefore, we need not consider whether the questions raised by the Governor's petition concern "vacancy or temporary disability," as to which the constitutional provision accords him no standing; the filing of the Commission's petition effects its standing to invoke our jurisdiction and permits us concurrently to consider the issues presented by the Governor's petition.

[4] Because our jurisdiction is exclusive it transcends the procedural limitations on appellate courts imposed by article VI, sections 10 and 11. Granting of relief, declaratory or otherwise, that ordinarily would be available only from trial courts may be appropriate here. We are not persuaded by the Commission's petition, however, that article V, section 10 calls on us to give advisory opinions. The petition alleges that "the question of the power of the Lieutenant Governor to act as Governor during the physical absence of the Governor from the state encompasses the entire spectrum of executive power" and prays that in "determin[ing] when the Governor is absent from the state within the meaning of [art. V, § 10]" we "set forth standards which may be applied to facts and circumstances which may foreseeably arise in the future." It is well settled that rendering "advisory opinion" is not a judicial duty imposed by article III, section 3, or article VI, sections 10 or 11 of the Constitution. (*Younger v. Superior Court* (1978) 21 Cal.3d 102, 119–120, 145 Cal.Rptr. 674, 577 P.2d 1014.) Our "exclusive jurisdiction to determine all questions arising under" article V, section 10 is subject to the same qualification. In this case the dispute concerning the Governor's disability due to absence involves a question

Code, § 12072). Section 12073 provides for exclusive jurisdiction with regard to questions relating to termination of the temporary disability of the Governor.

4. If that were not so, section 10 would not include the phrase "or *other* temporary disability of the Governor." (Emphasis added.) See also *post* p. 765 of 160 Cal.Rptr., p. 1362 of 603 P.2d for dialogue during legislative discussion of proposed amendment to article V, section 10.

that has arisen, and it is properly before us by petition of the Commission.

[5] We turn to the principal issue presented by the controversy, namely, the interpretation of the words "absence from the State." Preliminarily, we consider and reject the Governor's contention that under article V, section 10, his departure from the state can confer no gubernatorial power on the Lieutenant Governor without a prior petition to this court by the Commission, followed by this court's determination that the absence would constitute a temporary disability. It is argued that our "exclusive jurisdiction to determine all questions arising under" article V, section 10, makes us the only entity that can conclude authoritatively that the Governor is temporarily disabled by absence or other reason. The claimed prerequisite of a petition is based on the Commission's exclusive "[s]tanding to raise questions of vacancy or temporary disability."

[6] We disagree. To require express judicial authorization before the Lieutenant Governor could act as Governor during the Governor's absence or other temporary disability would contravene the purpose of article V, section 10, to prevent gaps in the availability and continuity of the executive power. As explained in the discussion of our present jurisdiction, the Constitution charges us only with determining "questions" of temporary disability, not with giving advisory opinions in the absence of dispute. The Lieutenant Governor—like any public officer with executive duties—must apply and, if necessary, interpret the law prescribing those duties as found in the Constitution, legislation, and authoritative decisions. Our role is to resolve controversies as to interpretation, not to dictate initial formulations.

[7] The parties offer two possible interpretations of the words "absence from the State." The Governor proposes that the term "absence" must be read as an "effective absence," an absence determined by the state's need at the time for the particular act by the official then physically present. The Lieutenant Governor, on the other hand, asserts that the term must be given its literal, common meaning of physical nonpresence. We conclude that constitutional and legislative history, contemporaneous interpretation and historical practice, and considerations of public policy, namely the need for certainty in effectuating executive decisions, support the Lieutenant Governor's position.

The words "absence from the state" have remained unchanged in the California Constitution for 130 years despite several other changes in the pertinent clause. From 1849 to 1966, the Constitution provided that in case of the Governor's "impeachment" or "absence from the State" his duties "devolve upon" the Lieutenant Governor "until the disability shall cease." (Cal.Const. of 1849, art. V, § 17; Cal.Const. of 1879, art. V, § 16, with amendments of 1898, 1946 and 1948.) Present article V, section 10, adopted in 1966 and amended in 1974, similarly provides that the Lieutenant Governor "shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor."

In 1966, during legislative discussion of the proposed amendment to article V, section 10, special counsel to the Constitution Revision Commission was asked the meaning of "absence from the state" and its reference to "disability." Counsel's response indicated that "absence from the state" meant physical absence in the literal sense; as to the use of the term "disability," he stated: ". . . [T]he Commission felt that if the constitution should prohibit the Governor from acting then it should be classified as a disability. It is not an inability. The Governor could be someplace outside the state and be very capable of performing his duties by a long distance telephone. He would be legally disabled

from doing so. Disability is more accurate." [5]

Our attention has been called to no previous challenge in court to the proposition that the Governor's physical absence from California confers full gubernatorial power on a physically present Lieutenant Governor. The state government has functioned under this provision without any question that its language means what it plainly states.[6]

It is argued that the word "absence" should be interpreted to reflect modern conditions of travel and communication and that technology has eliminated in part the objections that drafters of the early Constitutions might have had to permitting the Governor to act from outside the state or to permitting postponement of gubernatorial actions until his return. We note that the Constitution Revision Commission could have proposed a change in the language in 1966 to reflect modern conditions of travel and communication but did not do so. We are not persuaded that time or technology compels such a change by judicial fiat.

We are mindful that some jurisdictions have interpreted similar provisions to prevent the acting governor or other executive from exercising full executive powers, or more precisely, to invalidate the acts of officials empowered to perform executive functions during the absence of the executive from the city or state.[7] The Governor embraces the theory propounded by these cases and contends that not merely physical absence but "effective" absence must be shown before the substitute executive can act. The rationale of the cases that support his view is summarized in *Sawyer* (82 Nev. 53, 56, 410 P.2d 748, 749): " 'absence' as contained within rules for orderly succession in government means 'effective absence'—i. e., an absence which is measured by the state's *need* at a given moment for a particular act by the official then physically not present."

[8] The conceptual difficulty with the effective-absence test is that virtually any physical absence of the Governor may create a need for action by an acting governor, at least to deal with emergencies. The Governor here does not claim any power to act from outside the state boundaries, nor does it appear that any such claim has ever been made by his predecessors. Since a physically absent Governor cannot act, the overriding purpose of avoiding a hiatus in the availability of executive power requires that, during the absence, the sole and entire power to act as Governor be transferred to a Lieutenant Governor who is physically within the state.

5. Transcript, Assembly Interim Committee on Constitutional Amendments, February 23, 1966, pages 29–34. Additional dialogue supports a literal interpretation of the word "absence":

Legislator: "And then, of course, absence from the state. What does absence from the state mean? Is that defined somewhere else? Suppose the Governor goes to Timbuktu or somewhere outside of the United States. During that time the Lieutenant Governor is by this provision acting temporarily. Is that right?

Counsel: "That's correct. That's the existing law. We put these two examples [impeachment and absence from the state] in . . . because we wanted to be sure that these were construed to be temporary disability, because if we just said temporary disability we think it would be reasonable for someone to construe impeachment as not being temporary disability." (*Id.*, p. 33.)

We have no doubt that counsel's reference to "existing law" was a reference to the Constitution as it read prior to the amendments then being discussed.

6. Historical research reveals that in the past 16 years more than 1,400 gubernatorial actions (proclamations, executive orders, pardons and signing of legislation) have been taken by an acting governor while the Governor was physically absent from the state.

7. *Sawyer v. First Judicial District Court* (1966) 82 Nev. 53, 410 P.2d 748; *Gelinas v. Fugere* (1935) 55 R.I. 225, 180 A. 346; *Cytacki v. Buscko* (1924) 226 Mich. 524, 197 N.W. 1021; *State ex rel. Olson v. Lahiff* (1911) 146 Wis. 490, 131 N.W. 824; *Watkins v. Mooney* (1903) 114 Ky. 646, 71 S.W. 622; *Mayor of Detroit v. Moran* (1881) 46 Mich. 213, 9 N.W. 252. We find these cases neither persuasive nor controlling.

Legislative enactments which implement article V, section 10, are in full accord with this view. Section 12002 of the Government Code provides that "Every law of this State relating to the powers and duties of the Governor and to acts and duties to be performed by others toward him extends to the person performing for the time being the duties of Governor." Section 12058 (Gov.Code), enacted in 1966, provides that "[i]n case of impeachment of the Governor or officer acting as Governor, his *absence from the state, or his other temporary disability to discharge the powers and duties of office*, then the powers and duties of the office of Governor devolve upon the same officer as in the case of vacancy in the office of Governor, but only until the disability shall cease." (Emphasis added.)

There is no room in the all inclusive language of these statutes for a watered down "effective" absence or any other concept whereby an acting governor could discharge some but not all of the duties of the governor in his absence.

[9] Our conclusion is also in accord with the contemporaneous and settled interpretation of the constitutional provision by those charged with its execution. (See *State of South Dakota v. Brown* (1978) 20 Cal.3d 765, 777–778, 144 Cal.Rptr. 758, 576 P.2d 473 and cases there cited.) We take judicial notice (Evid.Code, § 452, subd. (c)) of the more than 1,400 gubernatorial actions taken in the last 16 years by Lieutenant Governors or other acting governors during the Governor's absence. The unquestioned acceptance of these exercises of gubernatorial power is evidence of a settled contemporaneous construction deserving of great weight. (*City of Los Angeles v. Rancho Homes, Inc.* (1953) 40 Cal.2d 764, 770–771, 256 P.2d 305; *State of South Dakota v. Brown, supra*, 20 Cal.3d at pp. 777–778, 144 Cal.Rptr. 758, 576 P.2d 473.)[8] "'Not lightly vacated is the verdict of quiescent years.'" (*Anderson Nat. Bank v. Luckett* (1944) 321 U.S. 233, 244, 64 S.Ct. 599, 606, 88 L.Ed. 692, quoting from *Coler v. Corn Exchange Bank* (1928) 250 N.Y. 136, 141, 164 N.E. 882, 884.)

[10] The command that the Lieutenant Governor "act as Governor" during the Governor's absence (art. V, § 10) places upon the Lieutenant Governor complete, albeit temporary, responsibility for "[t]he supreme executive power of this State" and for "see[ing] that the law is faithfully executed" (art. V, § 1). As acting governor, the Lieutenant Governor is free to act on whatever matters he determines need attention during the Governor's absence. Thus, the appointment by Lieutenant Governor Curb of Judge Arabian as presiding justice of the Court of Appeal was valid.

There remains the question of the Governor's authority to revoke, rescind, or withdraw the appointment of Judge Arabian.

The Lieutenant Governor contends that his letter submitting the Arabian appointment to the Commission on Judicial Appointments exhausted the appointive power and could not be revoked by gubernatorial act. The leading statement of the principle relied on is in *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 where President Jefferson's Secretary of State, Madison, was held to have a ministerial duty to deliver a document evidencing Marbury's appointment as justice of the peace made by outgoing President Adams with the advice and consent of the Senate. Chief Justice Marshall's opinion states: "The last act to be done by the president is the signature of the commission: he has then acted on the advice and consent of the senate to his own nomination. The time for deliberation has then passed: he has decided. His judgment, on the advice and consent of the senate, concurring with his nomination, has been made, and the officer is appointed.

8. Also of interest is the experience of former Governor Earl Warren. In The Memoirs of Earl Warren (1977) at pages 264–265, he tells of leaving unsigned bills in a safe deposit box so that a contemporary Lieutenant Governor could not sign them into law while Warren was on a trip to England.

This appointment is evidenced by an open unequivocal act; and being the last act required from the person making it, necessarily excludes the idea of its being, so far as respects the appointment, an inchoate and incomplete transaction.

"Some point of time must be taken, when the power of the executive over an officer, not removable at his will, must cease. That point of time must be, when the constitutional power of appointment has been exercised. And this power has been exercised, when the last act, required from the person possessing the power, has been performed: this last act is the signature of the commission." (5 U.S. at p. 157.)

[11] California courts have followed that principle. (See *Weatherbee v. Cazneau* (1862) 20 Cal. 503 [Governor's interim appointment]; *People ex rel. Ryder v. Mizner* (1857) 7 Cal. 519, 526 [same]; *MacAlister v. Baker* (1934) 139 Cal.App. 183, 33 P.2d 469 [city council's appointment to v[illegible]ant council seat].) On the other hand, uncompleted appointments are subject to withdrawal. (See *Conger v. Gilmer* (1867) 32 Cal. 75 [board of supervisors could reconsider appointment before issuing appointee a commission]; *Harrington v. Pardee* (1905) 1 Cal.App. 278, 82 P. 83.) Thus, in *Harrington*, Governor Pardee was held entitled to refuse to issue a commission to a person whose appointment by his predecessor had been confirmed by the Senate, since issuance of the commission was deemed a discretionary act.

[12] *Harrington* is distinguishable here because transmittal of an appointment to the Commission on Judicial Appointments completes the gubernatorial action necessary to an appellate judicial appointment. Though the Governor issues commissions to new appellate judges (see Gov.Code, § 1340, subd. (d)), the Constitution makes the appointment "effective when confirmed by the Commission on Judicial Appointments." (Art. VI, § 16, subd. (d); see Gov.Code, § 68121 [confirmation "is effective when filed in writing with the Secretary of State"].)

[13] Even though submission for commission confirmation completes the gubernatorial action necessary for an appointment to an appellate judgeship, it does not complete the appointive process or confer even an interim right to assume office.[9] Under those circumstances may the Governor withdraw the appointment before confirmation?

Past governors appear to have withdrawn appointments from commission consideration without challenge of their power to do so. (See Partial Rep. of Joint Judiciary Com. on Administration of Justice, pp. 38–39, 2 Appendix to Sen.J. (1959 Reg.Sess.), testimony of Chief Justice Gibson.) There are good reasons, for upholding the power. The fact that the appointee has not yet acquired any rights eliminates the objection that withdrawal constitutes removal from office. The withdrawal power prolongs gubernatorial scrutiny of the appointment, furthering the confirmation's ultimate purpose of assuring thorough consideration of the candidate's qualifications. (See Nelson, *Variations on a Theme—Selection and Tenure of Judges* (1962) 36 So.Cal.L.Rev. 4, 19–26.)

[14] Finally, the general rule in other states is that "where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested." (*McChesney v. Sampson* (1930) 232 Ky. 395, 401, 23 S.W.2d 584, 586–587; accord: *McBride v. Osborn* (1942) 59 Ariz. 321, 127 P.2d 134 [upholding withdrawal]; *Burke v. Schmidt* (1971) 86 S.D. 71, 191 N.W.2d 281; *In re Advisory Opinion to the Governor* (Fla.1971) 247 So.2d 428, 433; *State ex rel.*

9. We are not here called upon to decide at what point the appointment of a judge not subject to confirmation by the Commission on Judicial Appointments becomes irrevocable.

Todd v. Essling (1964) 268 Minn. 151, 156, 128 N.W.2d 307.) Therefore we conclude that Governor Brown's withdrawal of the Arabian appointment was valid.

Let a peremptory writ of mandate issue directing the Commission on Judicial Appointments to exercise its discretion with respect to the appointment of Justice Jefferson.

TOBRINER, Acting C. J., and MOSK, CLARK, RICHARDSON and TAYLOR (Assigned by the Acting Chairperson of the Judicial Council), JJ., concur.

NEWMAN, Justice, concurring.

I agree that the withdrawal of the Arabian appointment was valid and that the writ should issue. I do not agree that "a physically absent Governor cannot act" (*ante*, p. 766 of 160 Cal.Rptr., p. 1363 of 603 P.2d).

That phrases in a constitution were deemed apt for a horse-and-wagon era does not ordain that we eschew sensible, up-to-date analysis of their meaning 130 years later. Justice Holmes once cautioned: "[W]hen we are dealing with words that also are a constituent act, like the Constitution of the United States, we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago. . . . We must consider what this country has become . . ." (*Missouri v. Holland* (1920) 252 U.S. 416, 433–434, 40 S.Ct. 382, 383, 384, 64 L.Ed. 641.)

His wise admonition applies here, as does this comment by Chief Justice Hughes in *Home Bldg. & Loan Ass'n. v. Blaisdell* (1934) 290 U.S. 398, 442, 54 S.Ct. 231, 78 L.Ed. 413 (see also A. S. Miller, *The Elusive Search for Values in Constitutional Interpretation* (1979) 6 Hast.Const.L.Q. 487): "It is no answer to . . . insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning—'We must never forget that it is a *constitution* we are expounding' (*McCulloch v. Maryland*, 17 U.S. 316, 4 Wheat. 316, 407, 4 L.Ed. 579)—'a constitution intended to endure for ages to come, and consequently, to be adapted to the various *crises* of human affairs.' *Id.*, p. 415. . . . [¶] *[W]e find no warrant for the conclusion that . . . the founders of our Government would have interpreted the clause [at issue] differently had they had occasion to assume that responsibility in the conditions of the later day.*" (Italics in that final sentence added.)

In our case the focus of the majority opinion is "absence". How to interpret the phrase "absence from the State" is labeled "the principal issue presented by the controversy" (*ante*, p. 764 of 160 Cal.Rptr., p. 1362 of 603 P.2d).

I believe that we are better guided if we focus not on "absence" but instead on the words "other temporary disability". The California Constitution in article IV, § 21(b) provides for "[f]illing of the office of Governor should the Governor be killed, missing, or *disabled*, until the Governor . . . is *able* to perform the duties of the office" (italics added). Article V, § 10 refers to other "temporary exercise of the Governor's functions"; and it orders the Lieutenant Governor to "act as Governor during the impeachment, absence from the State, or OTHER TEMPORARY DISABILITY of the Governor" (emphasis added).

My majority colleagues conclude that "absence" means having crossed a State

boundary. Might it rather mean now what the draftsmen intended it to mean 130 years ago; that is, absence constitutes a disability like other temporary disabilities when now, as then, *in fact* it is disabling? (Note again the words "disabled" and "able" in article IV, § 21(b), quoted in my preceding paragraph.)

When the Governor is absent from the State is he in fact disabled from performing the duties of his office? Indeed he is not. Car-to-office, air-to-ground, and ship-to-shore calls are routine; so are conference calls and closed-circuit TV consultation. Many tasks that Governors have performed while temporarily residing in San Francisco or Los Angeles, say, could be done from any city, within or without California. Constant travelers such as the President of the United States, the Governors of other States with problems comparable to ours, the mayors of great cities, and countless government and corporate executives every day benefit from telecopiers, distance-ignoring word-processors, "talking" typewriters, signature reproducers, instant information-retrieval, other marvels not affected by State or even international boundaries. (Cf. Hanna, *Law Office of the Future* (Feb. 1979) N.J.S.B.J. No. 86, p. 10; Brown, *N. Y. U. Law Professor to Teach on Coast via TV*, N.Y.Times Sept. 5, 1979 "an interactive hookup by satellite that will permit him to take questions and engage . . . in discussion for an hour").

So therefore should we infer that, in the 20th Century, absence is never disabling? The answer is No. The Lieutenant Governor (or his surrogate, should he too be temporarily disabled) must be alert not only "[t]o meet the needs resulting from war-caused or enemy-caused disaster" (art. IV, § 21) but also to act as Governor whenever the elected Governor suffers a true disability. It could be caused by serious illness. It could occur when he is incommunicado—in a jungle or a mountain wilderness, for instance, or because of a natural disaster or other catastrophe. It could be the result of electronic or other malfunctioning. But the test should always be "disability". *Absence that is not disabling is not a temporary disability.*

The 1849 and 1879 constitutions talked of the Governor's "inability to discharge the powers and the duties of the said office" and required the Lieutenant Governor to act "until the disability shall cease". To hold in this Centennial Year 1979 that the 130-year-old tradition must be frozen until modernized by constitutional amendment seems almost irrational and yet radical. By no means does rationality call for a Gold Rush Days approach to governing. (See the quotations from Justices Holmes and Hughes, *supra*.) And when we contemplate its antiquated, stifling, and potentially hurtful impact on use of the executive power in our complex State, cannot the majority's approach here fairly be labeled radical (albeit reactionary)?

The majority concede that "the purpose of article V, section 10, [is] to prevent gaps in the availability and continuity of the executive power" (*ante*, p. 764 of 160 Cal. Rptr., p. 1362 of 603 P.2d); and they refer to "public policy, namely the need for certainty in effectuating executive decisions" (*ante*, p. 764 of 160 Cal.Rptr., p. 1362 of 603 P.2d). Yet neither the availability nor the continuity of executive power need be affected by mere absence. (See *In re Advisory Opinion to the Governor* (Fla.1959) 112 So.2d 843.) Moreover, serious discontinuity and uncertainty and even bizarre effects can result from the pretense that "a physically absent Governor cannot act." (*Ante*, p. 766 of 160 Cal.Rptr., p. 1363 of 603 P.2d. The *Justice Jefferson vs. Judge Arabian* contretemps here is illustrative; and cf. "Program of would-be acting governor curbed", S.F. Examiner, Nov. 8, 1979, p. 46.) [1]

WHAT WAS THE TRUE INTENT IN 1966?

The scores of individuals involved in the drafting and approval of the 1966 revision

1. If, hypothetically, Earl Warren had been Chief Justice of California and not a politically ambitious Governor, would he have construed "absence from the State" restrictively? Cf. the

of the words concerning us that now are in effect ("The Lieutenant Governor shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor") might have written, "The Lieutenant Governor shall act as Governor during the impeachment or other temporary disability of the Governor." Instead they included and thus preserved "absence from the State". Does that imply an intent in 1966 to cast in concrete all the old assumptions on what those four words demand? I think not.

In February 1966 the California Constitution Revision Commission submitted the first of many reports to the Legislature. It was lengthy (212 pages). It proposed *first,* that many words (16,000 out of 22,000) be deleted from the Constitution (from articles III to VIII and also XXIV); *second,* that many other words be left unchanged; *third,* that new wordings be adopted to effect major and minor revisions, several of them simplificatory only.

Was there an intent in 1966 to freeze the non-judicial, archaic interpretation of "absence from the State" that my majority colleagues now decree? Their opinion relies on excerpts from February 23, 1966 testimony before the Assembly Interim Committee on Constitutional Amendments. They summarize it as follows (*ante,* p. 765 of 160 Cal.Rptr., p. 1362 of 603 P.2d): "[S]pecial counsel to the Constitution Revision Commission was asked the meaning of 'absence from the state' and its reference to 'disability.' Counsel's response indicated that 'absence from the state' meant physical absence in the literal sense; as to the use of the term 'disability,' he stated: '. . . [T]he Commission felt that if the Constitution should prohibit the Governor from acting then it should be classified as a disability. It is not an inability. The Governor could be someplace outside the state and be very capable of performing his duties by a long distance telephone. He would be legally disabled from doing so. Disability is more accurate.' "

The quoted words (and also those in the majority's footnote 5) are best understood if we check the full testimony. "To use snippets . . . is perilous." (*People v. Tanner* (1979) 24 Cal.3d 514, at 539, 156 Cal.Rptr. 450, 596 P.2d 328 (conc. opn.).)

The Commission's special counsel and the staff attorney who testified with him understandably had to ad-lib many answers to often-tough questions put by legislators at the hearing.[2] I doubt that the special counsel, if pressed, could have documented his view (quoted in my excerpt from the majority opinion) as to what it was "the Commission felt". There were some 80 commissioners—including 6 legislative members, 17 "ex officio legislative members", and 11 individuals who had resigned or died. The draft language that puzzles us here was a tiny segment of a huge set of initial recommendations. Most commissioners, obviously, "felt" nothing whatsoever on our subject.

majority's footnote 8 and also Rodda, *The not-always-accurate memoirs of Earl Warren,* Calif.J. (Nov. 1977) p. 378.

2. That sometimes the correct answers were not known is shown by this exchange: "WILLSON: . . . What is the process in the Constitution for impeaching the Governor of the State of California? Is there a trial by the Assembly and trial by the Senate? [¶] [SPECIAL COUNSEL]: He is tried by the Assembly, I believe, he is tried by the lower house. [¶] WILLSON: Is there a written charge that claims he should be impeached on certain charges? Is that the way it operates? [¶] [SPECIAL COUNSEL]: The specific form, the pleading, is not in the Constitution, Mr. Willson, and I'm not sure what it is."

One wonders why the staff attorney said that "the Supreme Court could provide for an acting Governor" in this excerpt: "[I]f the Governor were merely impeached the Supreme Court could provide for an acting Governor in the Lieutenant Governor who would take over the duties of office until the Governor was either convicted, in which case the Lieutenant Governor would become Governor, or was acquitted, in which case the Governor would resume his office."

The two excerpts exemplify the kind of partially correct answering that often typifies legislative committee hearings.

Regarding what "the Commission [might have] felt", are not the most reliable guides the words that appear in the Commission's formal proposal? It read: "The Lieutenant Governor . . . shall act as Governor during the impeachment, absence from the State, or other temporary disability of the Governor. . . . The Legislature shall provide for an order of precedence after the Lieutenant Governor . . . for the temporary exercise of [the Governor's] functions."

To be contrasted are certain words (which I now bracket and italicize) that the Commission proposed to delete from the then existing Constitution, as amended in 1948: "In case of impeachment of the Governor . . ., his absence from the State, or his other temporary disability *[to discharge the powers and duties of office]*, then the powers and duties of the Office of Governor devolve upon the same officer as in the case of vacancy in the Office of Governor *[, but only until the disability shall cease]*."

It seems clear that the proposed deletion of "to discharge the powers and duties of office" evidenced no intent to change "other temporary disability" and that the deletion of "but only until the disability shall cease" involved mere style. Those two phrases are helpful, though, in analyzing the 1946 deletion of the word "inability".

INABILITY AND DISABILITY

Readers will recall, from an earlier paragraph in this opinion, the dictum of the Revision Commission's special counsel that "[D]isability . . . is not an inability." The 1849 constitution provided that "the powers and duties of the office shall devolve upon the Lieutenant Governor . . until the disability shall cease"; and "disability" meant impeachment, absence from the State, and "*inability* to discharge the powers and duties of the office" (italics added). There was no change in 1879.

In 1946 the clause was amended to read, "In case of the impeachment of the Governor . . ., his absence from [the] State, or his other temporary disability to discharge the powers and duties of office, then the powers and duties of the office of Governor devolve . . ., but only until the disability shall cease." *In this lawsuit there is not even a scrap of evidence that suggests any intent by anyone in 1946 to distinguish "disability" from "inability".* For nearly a century the words had been treated as synonymous. After 1946 they still were synonymous. The special counsel erred, I think, when he ad-libbed his brief comment in 1966.

Further, a Revision Commission memo on "Presentation of proposed Article V", addressed by the staff attorney on April 7, 1966 to the Chairman of the Commission, the Chairman of its Article V Committee, and the Chairman of its Drafting Committee, on p. 3 states: "Standard of 'temporary disability' has a sufficiently definite and understood meaning to serve as a reasonable guideline for the court. Additional detail might bind the court, in a situation which we cannot now foresee, in a way that defeats the otherwise clear purpose underlying the scheme of succession and disability provisions." What was that clear purpose? It was to have the "scheme of succession" take effect whenever the Governor becomes temporarily disabled, for any reason.

Quite comparable is this excerpt from the hearings: "SONG: . . . [W]hat if a Governor is so physically disabled he's confined to bed? His mental process is working quite well. I would assume, then, from wh. . you say, that the court can declare the office vacant. [¶] [STAFF ATTORNEY]: They would have that authority, yes, subject to all the responsibilities placed upon a judiciary construing the Constitution. [¶] SONG: Shouldn't certain limitations be spelled out in the Constitution? [¶] [STAFF ATTORNEY]: We felt that the spelling out of certain limitations and describing specific situations left the body which has to make this ultimate determina-

tion, a very difficult determination, really insufficient tools to do it with."

Nonetheless the majority opinion here does spell out an indisputably needless limitation; i. e., that mere absence is a disability, always.

In sum, analysis and history justify a conclusion that "absence from the State" does mean now what it meant when it was first written. In 1979, as in 1849, absence should effect the transfer of gubernatorial power only when in fact it is disabling, temporarily.

OFFICIAL TRAVEL?

A hidden weakness in the majority opinion is disclosed when we examine its reach. Californians are advised that "*the sole and entire power* to act as Governor" is transferred to the Lieutenant Governor when he is within the State while the Governor is outside (*ante*, p. 766 of 160 Cal.Rptr., p. 1363 of 603 P.2d; italics added). Similarly he has "*complete*, albeit temporary, responsibility"; and he is "free to act on *whatever matters* he determines need attention during the Governor's absence" (*ante*, p. 767 of 160 Cal.Rptr., p. 1364 of 603 P.2d; italics added).

What those words overlook is that most travels by modern Governors are for official State purposes. Most trips involve something more than seeking federal office, exploring a distant continent, or vacationing with family or friends. Yet if the Lieutenant Governor truly does have "the sole and entire power", if his duties do involve "complete . . . responsibility" if he is "free to act on whatever matters he determines need attention", then may he not legally intervene in the official projects of the traveling Governor?

To illustrate: How should a Congressional committee respond if a telegram or phone call from a Sacramento-based Lieutenant Governor purports to negate the ongoing testimony of a Governor who is in Washington, D.C., to describe California's emergency needs? When the Governor is absent here but present there, who articulates authoritatively our State's concerns at the out-of-State headquarters of the innumerable officials who, pursuant to negotiations that might involve the Governor, supply federal funds for State use? Who speaks and acts for California at Governors' sessions, at formal meetings with other-State and overseas investors, at innumerable other "outside forums" where the Governor's main concerns demonstrably are official concerns?

The majority opinion fails to recognize those questions. It ignores even more intricate questions as to the need for limitations on a Lieutenant Governor's power to undermine indirectly, in Sacramento, gubernatorial projects outside the State that for various reasons an ambitious Lieutenant Governor might not wish to countermand or modify directly.

Finally, the majority's words are so comprehensive that they may even authorize improbable, yo-yo-like contests regarding rescission or revocation of prior acts of the Governor. In this case, for example, what might have happened if the Lieutenant Governor, after March 28, 1979 and during a subsequent absence of the Governor, had withdrawn the Jefferson appointment and reappointed Arabian?

I conclude by quoting the possibly prophetic comment of a legislator during the 1966 committee hearings: "Assuming we have a Democratic Governor and a Republican Lieutenant Governor, I can see the court getting into the midst of a tremendous political brawl . . . ."

88 A.L.R. 2439–1480.

Grime v. G. 26 Cal(2d) 680, 160 P(2d) 822.

W. H. Brown & Bro. Co. v. C. B. & C. Co. 6 S.W.S.(2d) 40.

88 A.L.R. 2519–1524.

Supplementing 86 A.L.R. 1520. Supplemented in 96 A.L.R. 312 and 98 A.L.R. 826.✦

88 A.L.R. 1532–1533.

Supplementing 84 A.L.R. 1499, and 86 A.L.R. 1172.

Supplemented in 92 A.L.R. 1525 and 95 A.L.R. 1288; 101 A.L.R. 1318; and 114 A.L.R. 820.✦

89 A.L.R. 13–114.

Supplemented in 126 ALR 284.✦

89 A.L.R. 118–126.

Supplementing 29 ALR 1482; 33 ALR 1406; 44 ALR 704; and 48 ALR 293.

Supplemented in 160 ALR 1406.✦

89 A.L.R. 132–163.

Division VII of annotation supersedes annotation in 2 A.L.R. 1657.

Blackburn v. S. (Fla) 191 So 48.

State ex rel. A. v. A. (Fla) 191 So 71.

Maddy v. C. C. (Iowa) 285 N W 208.

Stith v. P. 251 Ky. 155, 64 S. W.(2d) 491.

Beckham v. K. 282 Ky 648, 139 SW(2d) 747.

Alleman v. D. (LaApp) 17 So (2d) 70.

Lind v. F. (Mich.) 262 N.W. 413.

Coleman v. L. (Mass.) 5 N.E. (2d) 46.

Gallaher v. C. C. 129 NJL 200, 29 A(2d) 408.

Harris v. B. of E. 216 NC 147, 4 SE(2d) 328.

De Woody v. U. 66 OhioApp 367, 34 NE (2d) 263.

Detoro v. P. (PaSuper) 21 A (2d) 114.

State ex rel W. v. H. (Tenn) 175 SW(2d) 553.

State ex rel G. v. H. (Utah) 142 P(2d) 665.

89 A.L.R. 171–200.

Supplemented in 104 A.L.R. 1301.✦

89 A.L.R. 210–238.

Nebraska v. W. 325 US 589, 89 L ed 1815, 65 S Ct 1332.

Crane v. S. (Cal.) 54 P.(2d) 1100.

Los Angeles v. G. (CalApp) 122 P(2d) 274, mod'd in 22 Cal (2d) 68, 142 P(2d) 289.

Colthorp v. M. H. L. D. (Idaho) 157 P2d 1005.

Mannix v. P. (Mont.) 26 P. (2d) 373.

Woodward v. P. (Mont) 147 P(2d) 1016.

Hutchinson v. S. (Neb.) 25 P (2d) 54.

89 A.L.R. 252–261.

Supplementing 82 A.L.R. 210, and 52 A.L.R. 546.

Kelvinator Sales Corp. v. G. 79 F.(2d) 741.

Elyea v. R. C. A. V. Co. 79 F. (2d) 759.

U. S. v. H. 74 F.(2d) 841, aff'g 9 F. Supp. 946.

Ken-Rad Corp. v. R. C. B. 80 F.(2d) 251.

William S. Gray & Co. v. W. B. Co. 99 F.(2d) 259.

Silbernagel v. H. D. Co. 99 F. (2d) 829.

Terre Haute Brewing Co. v. D. 102 F(2d) 425.

Falstaff Brewing Corp. v. I. F. & P. Co. 112 F(2d) 101.

Schmitt v. C.-D. F. Co. 116 F (2d) 779.

Tahir Erk v. G. L. M. Co. 116 F(2d) 865, rev'g 32 FSupp 722.

Bendix Home Appliances v. R. A. Co. 120 F(2d) 177.

Brooks v. S. R. Co. 130 F(2d) 746.

Tahir Erk v. G. L. M. Co. 143 F(2d) 232.

Transit Bus Sales v. K. C. 145 F2d 804.

Altman v. A. Inc. 13 F. Supp. 393.

Bushwick-Decatur Motors v. F. M. Co. 30 FSupp 917.

Rio Grande Oil Co. v. P. (Ariz.) 73 P.(2d) 707.

Long Beach Drug Co. v. U. D. Co. 13 Cal(2d) 172, 89 P(2d) 386, den. reh. 13 Cal(2d) 758, 88 P(2d) 698.

Zinn v. E-C-O Corp. (CalApp) 141 P(2d) 948, aff'd in 24 Cal (2d) 290, 149 P(2d) 177.

R. F. Baker & Co. v. P. B. & S. (Conn) 20 A(2d) 82.

Foster v. M. (Ga.) 179 S.E. 97.

Atlas Brewing Co. v. H. (Ia.) 252 N.W. 133.

J. I. Case Co. v. B. 141 Kan. 637, 42 P.(2d) 575.

Stratton & Terstegge Co. v. F. Co. 258 Ky. 678, 81 S.W.(2d) 1.

Indian Refining Co. v. B. 284 Ky 423, 145 SW(2d) 72.

Masset v. B. P. Co. (La.) 172 So. 413.

Harvey v. B. (LaApp) 198 So 188.

Masset v. B. P. Co. (LaApp) 199 So 422.

Levine v. L. & Co. (Mass) 25 NE(2d) 201.

Beebe v. C. A. Co. (Mo.App.) 117 S.W.(2d) 624.

Zelen v. D. I. (Neb.) 282 N.W. 387.

Hompes v. B. F. G. Co. (Neb) 288 NW 367.

Ansbacher-Siegle Corp. v. M. C. Co. (Neb) 288 NW 538.

Green v. P. O. Co. (App. Div.) 285 N.Y.S. 432.

Steimer v. P. 51 NYS2d 814.

Grubb v. P. M. Co. 209 N.C. 88, 182 S.E. 730.

Chapman v. G. P. C. (Or.) 52 P.(2d) 190.

Barcliffe v. U. O. Co. (Or.) 77 P. (2d) 126.

Peeler v. T. M. C. Co. (Or) 134 P(2d) 105.

Robinson v. U. 313 Pa. 301, 169 Atl. 886.

Werner v. H. (Pa. Super.) 194 A. 754.

Carter v. McC. (SC) 8 SE(2d) 844.

Tennessee & S. E. Coal Co. v. Coal Co. (Tenn.) 121 S.W.(2d) 333.

Dallas Elec. Supply Co. v. B. Co. (Tex) 185 SW2d 427.

Ford Motor Co. v. M. M. Co. (Tex. Com. App.) 73 S.W.(2d) 517.

United Appliance Corp. v. B. (Tex. Civ. App.) 108 S.W.(2d) 760.

Freiburger v. T. Co. (Wis.) 257 N.W. 592.

Silent Automatic Burner Co. v. S. A. Corp. (Wis.) 252 N.W. 271.

Tees v. L. 228 Wis 534, 300 NW 226.

89 A.L.R. 266–279.

Rio Grande Oil Co. v. S. S. Corp. 77 Cal. App. Dec. 851, 33 P.(2d) 987.

Beall v. N. S. Corp. (App. Div.) 2 N.Y.S.(2d) 51.

Citizens Bkg. & Sav. Co. v. S. R. & Co. 65 OhioApp 309, 29 NE(2d) 892.

89 A.L.R. 287–291.

Haws v. F. 72 F.(2d) 461.

Employers Liability Assur. Corp. v. M. (Ariz.) 41 P.(2d) 310.

Charles F. Harper Co. v. De W. M. & R. Co. (Cal. App.) 68 P.(2d) 1017.

U. S. Fidelity & G. Co. v. T. C. (Ga.) 1 S.E.(2d) 411.

State v. McK. (Kan.) 36 P. (2d) 327.

Fisher v. L. 180 La. 195, 156 So. 220.

Hurst v. C. 267 Mich. 210, 255 N.W. 419.

Ericsson v. S. (Neb.) 273 N. W. 17.

McBrien v. McB. 150 Misc. 849, 271 N.Y.S. 905.

Clark County v. B. (S.D.) 257 N.W. 44.

89 A.L.R. 295–333.

Supplementing 29 A.L.R. 313.

Beckett v. U. S. 84 F.(2d) 731.

D'Allessandro v. U. S. 90 F. (2d) 640.

Holmes v. U. S. 115 F(2d) 528.

Johnson v. U. S. 126 F(2d) 242.

Scott v. S. (Ala) 22 So2d 529.

York v. S. (AlaApp) 189 So 910, cert. den. 189 So 913.

Lawley v. S. (AlaApp) 190 So 106.

Bragan v. S. (AlaApp) 9 So (2d) 129, cont'g to ans. to cert. ques. 9 So(2d) 123.

Shaughnessy v. State (Ariz.) 32 P.(2d) 337.

Patten v. S. (Ariz.) 68 P.(2d) 669.

Nethken v. S. (Ariz) 104 P (2d) 159.

State v. G. (Ariz) 120 P(2d) 798.

Hudsmith v. State (Ark.) 67 S.W. 2d) 191.

Ball v. S. (Ark.) 95 S.W.(2d) 632.

Marks v. S. (Ark.) 95 S.W. (2d) 634.

88 ALR 1429-1480

Beatty v. U. S. M. S. Co. 111 Cal App2d —, 244 P2d 25.
Brumley-Wheeler, Inc. v. S. P. Co. (Ga App) 79 SE2d 568.
Sellers v. C. (NM) 265 P2d 709.
Royal Pioneer Paper Box Mfg. Co. v. L. J. & Co. (Pa Super) 115 A2d 887.
Stacy v. J. (Va) 70 SE2d 280.
Hill's, Inc. v. W. B. K., Inc. — Wash2d —, 246 P2d 1060.

88 ALR 1519-1524

Supplemented 96 ALR 312 and 96 ALR 826.+

88 ALR 1532-1533

Supplemented 92 ALR 1525 and 95 ALR 1383; 101 ALR 1318; and 114 ALR 820.+

89 ALR 13-114

Supplemented 126 ALR 284.+

89 ALR 118-126

Superseded 43 ALR2d 632.+

89 ALR 132-163

Service v. D. 354 US 363, 1 L ed 2d 1403, 77 S Ct 1152.
State ex rel. Jones v. S. (Ala) 81 So2d 542 (citing anno).
State ex rel. Bodner v. C. (Fla) 80 So2d 913.
Tappy v. S. (Fla) 82 So2d 161 (citing anno).
Burklin v. W. (Fla App) 97 So 2d 129.
Palmatier v. T. (Ill App) 135 NE 2d 811.
State ex rel. Johnson v. H. 161 Neb 475, 73 NW2d 625.
Jackson v. K. (NH) 108 A2d 44.
Meixell v. B. C. of H. 374 Pa 412, 97 A2d 822.
Hockman v. T. C. C. (W Va) 75 SE2d 82.
Layne v. H. (W Va) 90 SE2d 270 (citing anno).

89 ALR 171-200

Supplemented 104 ALR 1301.+

89 ALR 210-238

Cheesman v. C. 113 Cal App2d 26, 247 P2d 334.
Thompson v. S. (Idaho) 302 P2d 918.
Franklin Irr. River Pumping Co. v. L. (Idaho) 71 P2d 760.
McNaughton v. S. (Utah) 242 P 2d 779.

89 ALR 252-261

Jack's Cookie Co. v. B. (CA SC) 227 P2d 855.
Allied Investment Co. v. W. E. P. Inc. (CA Va) 227 P2d 879.
Bierce Motor Car Co. v. C. Corp. (DC Conn) 108 F Supp 918.
Societe Marocaine Des Etablissements P. Parrenin v. G. D. Co. (DC NY) 107 F Supp 210.
Nelson v. C. B. & M. Co. (Ala) 72 So2d 86.
Utah Oil Refining Co. v. L. (Colo) 214 P2d 881.
Cooper v. W. B., Inc. (Idaho) 251 P2d 669 (citing anno).
Nicholson v. A. 247 Ill App 496, 107 NE2d 39.
Dalton v. M. (Ky) 293 SW2d 470.
Eastern Waterworks v. V. (Md) 112 A2d 201.
Reed v. K. 352 Mich 287, 89 NW 2d 479.
Baird v. L. (Miss) 90 So2d 184.
Bachhaiden v. A. C. Co. 286 App Div 511, 145 NYS2d 202, reh den 286 App Div 1050, 147 NYS2d 673, motion gr 309 NY 1000, 133 NE2d 150.
Schmeltzer v. F. (Tex Civ App) 253 SW2d 331.

89 ALR 266-279

Adams v. T. 49 Wash2d 24, 297 P2d 954, 57 ALR2d 1372 (citing anno).

89 ALR 287-291

Superseded 32 ALR2d 1240.+

89 ALR 295-333

Tomoya Kawakita v. U. S. (US Cal) 343 US 717, 96 L ed 1249, 72 S Ct 950.
U. S. v. R. (CA NY) 195 F2d 583.
U. S. v. K. (CA Ill) 214 F2d 677.
Williams v. U. S. (CA Ga) 238 F2d 215.
People v. S. 41 Cal2d 483, 261 P2d 241.
People v. B. 42 Cal2d 200, 266 P2d 505, cert den 348 US 848, 99 L ed 668, 75 S Ct 73.
People v. C. 43 Cal2d 342, 273 P2d 521.
People v. G. 47 Cal2d 209, 302 P2d 307.
People v. T. 127 Cal App2d 436, 273 P2d 934.
People v. B. (Cal App) 274 P2d 514, superseded in 44 Cal2d 459, 282 P2d 509.
Arnold v. S. (Fla) 83 So2d 105.
Walden v. S. (Fla) 83 So2d 111.
Hutley v. S. (Fla) 94 So2d 815.
Territory of Hawaii v. M. I. 39 Haw 152.
State of W. (Idaho) 273 P2d 97.
State v. C. (Idaho) 276 P2d 959.
State v. S. (Idaho) 313 P2d 706.
State v. N. (Iowa) 81 NW2d 20.
State v. L. (Mo) 293 SW2d 300.
Parsons v. S. 156 Neb 847, 58 NW2d 182.
Olson v. S. 160 Neb 604, 71 NW 2d 124.
Gueden v. S. (Neb) 77 NW2d 166.
State v. E. (Nev) 248 P2d 414.
Nordco, Inc. v. S. (NJ Super) 128 A2d 491 (citing anno).
State v. M. (NM) 313 P2d 937.
People v. P. (App Div) 112 NYS 2d 110.
People v. S. (App Div) 112 NYS 2d 291.
People v. S. (App Div) 116 NYS 2d 879.
People v. F. (App Div) 118 NYS 2d 589.
People v. H. (App Div) 122 NY S2d 1.
People v. B. (App Div) 128 NYS 2d 795.
People v. D. 283 App Div 214, 128 NYS2d 502.
People v. B. 283 App Div 1076, 130 NYS2d 720.
People v. P. 286 App Div 773, 140 NYS2d 654.
People ex rel. Maurer v. J. 1 App Div2d 140, 148 NYS2d 136.
People v. S. 2 App Div2d 935, 156 NYS2d 115.
People v. B. 3 App Div2d 699, 159 NYS2d 67.
People v. H. 3 App Div2d 851, 161 NYS2d 808.
People v. G. 3 App Div2d 980, 162 NYS2d 504.
P. v. Millspaugh, 5 App Div2d 685, 168 NYS2d 688, aff'd 4 NY2d 900, 174 NYS2d 650, 151 NE2d 85.
People v. C. (Co Ct) 114 NYS2d 249.
People v. M. (Co Ct) 115 NYS2d 215.
People v. D. (Misc) 137 NYS2d 729.
State v. R. 161 Ohio St 213, 118 NE2d 517.
Ratcliff v. S. (Okla) 259 P2d 152.
Hamilton v. S. (Okla Crim App) 214 P2d 328.
France v. S. (Okla Crim App) 214 P2d 341.
Mandrell v. S. (Okla Crim App) 214 P2d 345.
Roberts v. S. (Okla Crim App) 245 P2d 759.
Brumley v. S. (Okla Crim App) 249 P2d 471.
Parnell v. S. (Okla Crim App) 250 P2d 474.
Lee v. S. (Okla Crim App) 250 P2d 883.
Brooksher v. S. (Okla Crim App) 251 P2d 200.
McMahan v. S. (Okla Crim App) 251 P2d 204.
Sheffield v. S. (Okla Crim App) 252 P2d 165.
Cofer v. S. (Okla Crim App) 253 P2d 567.
Collier v. S. (Okla Crim App) 253 P2d 568.
Zuniga v. S. (Okla Crim App) 254 P2d 378.
Hixon v. S. (Okla Crim App) 254 P2d 387.
Collins v. S. (Okla Crim App) 255 P2d 292.
Hill v. S. (Okla Crim App) 256 P2d 469.
Dickey v. S. (Okla Crim App) 257 P2d 310.
Flinn v. S. (Okla Crim App) 257 P2d 324.
Littke v. S. (Okla Crim App) 258 P2d 211.
Sholes v. S. (Okla Crim App) 260 P2d 440.
Madison v. S. (Okla Crim App) 265 P2d 509.
Pierce v. S. (Okla Crim App) 265 P2d 737.
Rich v. S. (Okla Crim) 266 P2d 476.
Kidd v. S. (Okla Crim) 266 P2d 992.
Hill v. S. (Okla Crim) 266 P2d 979.
Holladay v. S. (Okla Crim) 267 P2d 1012.
Lewis v. S. (Okla Crim) 268 P2d 305.
Maiden v. S. (Okla Crim) 273 P2d 774.
Parker v. S. (Okla Crim) 273 P2d 778.
Skaggs v. S. (Okla Crim) 273 P 2d 783.
Holland v. S. (Okla Crim) 274 P2d 792.
Spencer v. S. (Okla Crim) 275 P2d 329.
Leasure v. S. (Okla Crim) 275 P2d 344.
Skaggs v. S. (Okla Crim) 276 P2d 267.
Ruckman v. S. (Okla Crim) 276 P2d 278.
Kerr v. S. (Okla Crim) 276 P2d 284.
Austin v. S. (Okla Crim) 278 P2d 210.
Davis v. S. (Okla Crim) 280 P2d 719.
Craig v. S. (Okla Crim) 281 P2d 772.
Fields v. S. (Okla Crim) 284 P2d 442.

+When Supplemented see later Note and Blue Book under caption of later Note

88 ALR 996-1003
Ga.—S. v Parramore 106 SE2d 1

88 ALR 1016-1017
Superseded 81 ALR2d 1230+

88 ALR 1078-1080
N. Y.—Chartered Bank v A. T. Co. 47 Misc 2d 694, 263 NYS2d 53

88 ALR 1084-1085
Mich.—P. v Hannum, 362 Mich 660, 107 NW2d 804
N. Y.—Negro v D. 22 App Div 2d 406, 255 NYS2d 804
Ohio—Collins v C. 4 Ohio App 2d 42, 33 Ohio Ops 2d 59, 211 NE 2d 96

88 ALR 1103-1107
Tex.—Jackson v M. I. S. D. (Civ App) 302 SW2d 892

88 ALR 1114-1122
Supplemented 99 ALR 144+

88 ALR 1131-1148
U. S.—Cunningham v J. (DC SC) 251 F Supp 143
Ill.—Bowman v A. & Co. 160 NE 2d 753
N. J.—Leeds & Lippincott Co. v N. (Super Ch) 144 A2d 4
N. Y.—Snyder v M. E. & M. Co. 23 App Div 2d 671, 257 NYS2d 213
Wash.—Re West Waterway Lumber Co. 59 Wash 2d 310, 367 P2d 807
Hendricks v M. E. & S. Co. 68 Wash 2d —, 413 P2d 811

88 ALR 1151-1154
U. S.—Pawlik v N. (DC Ill) 195 F Supp 735
Fla.—Tortuga Marine Salvage Co. v H. A. & I. Co. (App) 171 So 2d 54
Ga.—W. T. Harvey Lumber Co. v W. L. Co. (App) 122 SE2d 143
Ill.—Pearson v H. (App) 158 NE 2d 102
Kan.—Domann v P. 347 P2d 373
Or.—Argonaut Ins. Co. v K. 413 P2d 613 (citing anno)

88 ALR 1158-1175
Cal.—Robinson Estate, 192 Cal App 2d 847, 13 Cal Rptr 842
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Denton v S., 290 Ark 24, 716 SW2d 198
Meadows v S., 291 Ark 105, 722 SW2d 584
Parker v S., 292 Ark 421, 731 SW2d 756
Bishop v S., 294 Ark 303, 742 SW2d 911
Johnson v S., 26 Ark App 286, 764 SW2d 621
Cal.—P. v Allen, 42 Cal 3d 1222, 232 Cal Rptr 849, 729 P2d 115
P. v Thompson, 45 Cal 3d 86, 246

some section of those 20 principal heads. So as we envision the state now, it would never have more than 20 principal departments, although there might be a great many subdivisions thereof. We vest in the governor the appointive power for the heads of these departments. That is subject to confirmation by the houses of the legislature meeting in joint session. All the way through here you will note that we have given the power of approval of the governor's appointments to a joint session of the legislature. We did so after checking with the department on the legislative which was following a similar procedure in the matter of approval of appointments. I might also add that the approval of appointments has been done in Alaska in that manner for many years by a joint session of both houses. In the matter of the major department heads we have left the power of removal in the hands of the governor. That I believe could be implemented by certain legislative law in regard to certain restrictions or hearings or appeals from the governor's removal powers, but it was intended that he should have a strong enough power to remove from office anybody without disgrace, mind you, we are not talking about impeachment, we are talking about just the removal of somebody who might prove to be incompetent or unable to perform the duties of the office. We have given certain power to the governor in setting up the executive or rather the administrative departments in that he may, in order to effectuate the strong executive and not be tied into any one of these departmental heads with any particular functions, reassign the functions to the different departments as the occasion and need might rise, but he will make those changes and would set them forth in an executive order which would not become effective until after it has been before the next succeeding legislature, and if they desired to, they could take an action disapproving that. If they did not take such action of disapproval, then the executive order as issued by the governor would become law, so he cannot go into the departments and make a quick shuffle without first having it submitted to the legislature and having their general consent by reason of their taking no negative action. That brake was thought necessary in order to maintain the stability in the administrative offices. Now we have set up in practically all cases, we hope the principal departments will be headed by a single executive, but we have also made provision that if there are multiheaded principal departments that they will be appointed by the governor, there again approved by both houses of the legislature, and they in turn may appoint an executive officer to perform as their functioning head. He will be subject to removal not by the governor but by the order of the board under such rules and regulations they may adopt. I might add, however, that we have left the removal powers of the board members of the heads of these principal departments in the governor's hands. I wanted to mention that the heads of all principal departments, along with their ability to perform their particular functions, will also have to have an acquaintance and a knowledge of Alaska under this requirement. We have

set up that they shall have been a resident of the state for at least three years preceding appointment to office. There again it was deemed by the Committee that any man who is to have a close hand in the handling of the Territory affairs, especially in regard to making policy, should have a close acquaintance with our country and with its people and with their needs and their desires. Three years was thought to be an absolute minimum for heads of principal departments who would assist in effectuating and carrying out departmental or state government policies. Now we have given the governor the power to fill any vacancy occurring during a recess. You will notice there are certain limits upon his power to fill those vacancies. If at the end of the session any of his ad interim appointments expire, or at the end of the next regular session is the way we have put it, but if he nominates somebody and they are sent down for confirmation to the legislature, the legislature does not confirm them during the session, then he may not nominate that same man for an interim appointment after the legislature has adjourned. We felt it was necessary there to have that restriction in order that the governor might not bypass the approving power of the legislature and make an ad interim appointment of somebody the legislature had refused to approve and did not confirm. I would like to ask if from my description here or my comments if I have omitted anything, I would like to ask any member on the Committee to further amplify upon the intent and thoughts of the Committee at this time before we go into a detailed discussion.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I think that we overlooked putting something in our last paragraph here, did we not? We first talk about appointments to be made by the governor with the advice and consent of the senate, or legislature in joint meeting. Our thought there was that possibly the legislature might pass an act providing that some certain appointee would be approved only by the senate, but then later on we neglected to put in the legislature in joint session. I am sure it was our intent that beginning with line 17 on the very last paragraph, the last page, "After the end of the session no ad interim appointment to the same office shall be made unless the governor shall have submitted to the senate or the legislature meeting in joint session," and then the very same thing in the very last line, "If the nomination shall have failed of confirmation by the senate or by the legislature meeting in joint session", that is the intent?

V. RIVERS: That was the intent and we will make a correction at the next recess on that so just keep in mind that it is the intent of the Committee that it shall read, "the legislature in joint session" there.

PRESIDENT EGAN: Are there questions? Mr. Johnson.

V. RIVERS: Speaking yet, without a motion on the floor, for the Committee, the Committee decided after the discussion in the judicial article in which the confirmation was by joint session that we would, as a Committee group, go along unanimously with the approval of confirmations by joint sessions of the legislature, so I will move and ask unanimous consent that this group express as a policy the intent that approval of appointments shall be confirmed by legislatures in joint session and that we will correct our proposals to conform to that policy.

RILEY: I'll second the motion.

PRESIDENT EGAN: Mr. Rivers moves, Mr. Riley seconds the motion. Mr. Victor Rivers.

V. RIVERS: I'll speak briefly on this motion. I might just say that the policy of confirmation by both houses in joint session is the present method by which we now confirm appointees to the various Territorial positions. It has been used for a number of years.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, this only applies to cases where provision is now made for confirmation by the house or the senate, period. It does not apply to all officers.

V. RIVERS: It does not apply to all officers. There is a paragraph in here that I might call your attention to. That is Section 18, where the governor fills vacancies. Now we don't know but what sometime there may come up a law which the legislature enacts that in the matter of filling vacancies they may be or may not be required to be confirmed by either or both houses, so it was our intent in that case on line 13 where it says, "...by the governor with the advice and consent of the senate or...". We were going to strike "of the senate or" and "with the advice and consent of either house". That would be the only exception where there is a possibility that the law would be enacted providing approval by one house, it's a matter of filling vacancies.

HELLENTHAL: Question. Do you realize we have set up the article on the composition of the advisory board on districting and those people are appointed by the governor. Now is it the intention that there be language superimposed there, by and with the consent of the joint houses assembled, or is this only to apply where in the present language the consent of one or the other body is required?

V. RIVERS: Yes, that is the intent. It reads this way: "The governor may fill any vacancy occurring in any office during a

recess of the legislature, appointment to which is made by the governor with the advice and consent of..." We would have it "of either house of the legislature".

HELLENTHAL: Then it would not apply to the redistricting board?

V. RIVERS: It would not apply to the redistricting board.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Well, I perceive it is a little bit useless for me to argue this point too much. However, I am convinced that we are being slightly paradoxical because we have already declared ourselves firmly in favor of a bicameral legislature and yet in the legislative article we diluted that by saying that vetoes of the governor shall be acted on in joint session instead of by each house separately. Now when this executive article first came out it contained almost uniformly the provision that appointments were to be made by the governor with the advice and consent of the senate, something that occurred to me as being extremely good. I believe firmly that we should have a strong executive and there has been a great deal of argument around here about expense. If under this article the governor can call the senate back into session, there is no reason why appointments couldn't be acted upon when he did so. However, now if appointments are to be acted on in that manner, he must call together both houses of the legislature and have them in joint session, and I disagree that the apportionment board or redistricting board, or whatever you call it, would not be covered by this language because, as I understand it, we are now adopting a general policy to cover all appointments in the future or present, and if we do that, then it will certainly cover the matter that Mr. Hellenthal raised. At least I can't see why that should be excepted from the general provisions. I am certainly against this type of amendment. I am against this type of procedure. I thought we were proceeding along the line of ultimately adopting a constitution that we would have no trouble in selling to the Congress of the United States and now I am not so sure.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, I agree with Mr. Johnson that this is a paradoxical situation; however, having seen this body change its mind several times, I'll say they are at least consistent in changing their minds. I am not in favor of this because I am in favor of a bicameral legislature. It is true that a joint session has been our method of confirming appointments, but I have never agreed with it because I have been there, seen

COOPER: Mr. President. Mr. Hellenthal asked the Committee Chairman a question that if certain boards or commissions were excluded. The answer was given as yes, but in Section 18 it says, "The governor may fill any vacancy occurring in any office during a recess of the legislature...", and Mr. Hellenthal pointed out that the board of apportionment, there might be a vacancy occur and before the governor could have a man seated on that board that could act with any legality whatsoever, both houses would have to be convened to confirm his appointment. Now you have a Legislative Council and it is my thinking that if the senate were to confirm at least some of these minor board members, the Legislative Council could poll the senate without even having to convene them. Certainly you do not want to have to fly 60 members to the state legislature to Juneau to appoint a member to the board of reapportionment.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, the way I read Section 18, it says, "The governor may fill any vacancy occurring in any office during a recess of the legislature, appointment to which is made by the governor with the advice and consent of the senate or of the legislature in joint meeting." This refers to very specific appointments, not to just any old board, and so I don't follow that argument at all.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: Mr. President, you notice that the nonpartisan board of reapportionment does not require confirmation.

COOPER: I know that, but Mr. President, might I have the floor on a point of personal privilege?

PRESIDENT EGAN: If there is no objection, Mr. Cooper, you may have the floor on a point of personal privilege.

(Mr. Cooper then spoke on a point of personal privilege.)

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President. Mr. Cooper and 175,000 other people have a perfect right to be confused, I believe. It was the intent of the Committee to exclude those appointments which did not have to be confirmed by the legislature, but according to the construction of this sentence, it is a little confusing. I would like to call it to the attention of the Style and Drafting Committee and I think they could take care of that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I think that it is clear, but probably not as clear as it could be. I know of two suggestions which will clarify it beyond any question. The thing should read like this: "The governor may fill any vacancy occurring in an office, appointment to which is made by the governor with the advice and consent of the senate or of the legislature in joint meeting during a recess of the legislature." Now if you put the word "an" in instead of "any", I think Mr. Cooper's objections will be met and it will be clearer.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment, or the proposed motion.

CHIEF CLERK: Mr. Rivers moved and asked unanimous consent that "The group express as a policy the intent that approval of appointments shall be confirmed by the legislature in joint session and we will correct this proposal to conform with the policy." That was the motion.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, after hearing the arguments, it may be that some of the delegates feel it is just too broad a handling of this subject and they may desire to handle it individually. I might say, that in all fairness to all delegates, I feel that if the thought of the body is that it is too broad an approach of policy, then it should be voted down and we handle this individually. I was trying to expedite the matter by making this motion, not to exclude anyone from a fair chance to be heard on each point.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I move and ask to withdraw the motion, Mr. President.

PRESIDENT EGAN: Mr. Victor Rivers has asked unanimous consent to withdraw his proposed motion.

R. RIVERS: I object.

PRESIDENT EGAN: Mr. Ralph Rivers objects.

R. RIVERS: The basis of my objection is that this is a fundamental proposition. We are not going to do it two or three different ways throughout the constitution. If we decide right now which way we will make all the articles conform. We've got it squarely before us which way we want to pursue. I think we just hashed it for 20 minutes, we've almost arrived at something, let's vote on this.

The "ayes" have it and the motion has been adopted. Mr. Hurley.

HURLEY: Mr. President, I would like to ask for the purpose, at least for my clarification, a question.

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

HURLEY: Is it the intent of the Committee that interim appointments be approved by either house of the legislature or both houses of the legislature?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: It was the intent of the Committee that interim appointments could be made under this clause by the governor subject to being filled in the manner provided by the constitution which we understood would be by joint session of the legislature.

HURLEY: I guess I didn't make my point. If there is a vacancy in any appointive office and the governor appoints someone else to fill it and the legislature is not at that time in session, will it be necessary for that legislature to reconvene and approve the appointment?

V. RIVERS: No, that was not the intent. We are referring to recess or interim appointments. He may appoint under this clause without calling the legislature and they will fill it until the legislature meets, and then the policy would be to confirm them in joint session of both houses. Is that clear?

HURLEY: Yes.

PRESIDENT EGAN: Are there amendments to Section 13? Mr. White.

WHITE: I have a question of the Chairman, Mr. President, regarding Sections 11 and 12, just to make sure I understand it. Do I assume from these two sections that it is not necessary nor desirable to declare martial law in every event when the governor might wish to call out the armed forces of the state?

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: As was pointed out yesterday, the declaration of martial law puts everything under the military and stops all the action of civil lawmaking and legislating bodies, and we felt that the intention here was that only in cases of invasion or rebellion or imminent danger thereof, would he declare martial law. However, if you have an emergency such as was mentioned

request for the adoption of this proposed amendment? Mr. Victor Rivers.

V. RIVERS: I will now ask to withdraw the proposed amendment because there is going to be one there that will cover it in a manner acceptable, I am sure, to all of us.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent to withdraw the proposed amendment. If there is no objection it is so ordered. Mr. Victor Fischer.

V. FISCHER: I have an amendment on the desk which has been there since before the recess. I would like it read.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment offered by Mr. Fischer.

CHIEF CLERK: "Strike Section 18."

V. FISCHER: I so move.

HERMANN: I second the motion.

PRESIDENT EGAN: Mr. Fischer moves, Mrs. Hermann seconds the motion that Section 18 be stricken, be deleted from the proposal.

V. FISCHER: Mr. President, all I would like to say is that we presently have a law to this effect on our statute books. It was enacted by the last session of the legislature. I do not see why we must enact things like this which we have in our regular enactments of the legislature, why we must include them in the constitution. I think the discussion here has shown the difficulties and problems that may arise out of bringing in this kind of detailed procedure. I think that the subject can be very adequately covered by legislation.

PRESIDENT EGAN: Is there further discussion? Mrs. Nordale.

NORDALE: I favor leaving it in. Any act of the legislature can be removed by the succeeding legislature. We are setting up a strong executive and we are requiring that most appointments be confirmed in some manner or other. In the constitution it is by joint session. There may be many laws setting up other positions which will require only confirmation by only one house or the other. But nonetheless, I think that the people have a right to expect the governor will submit his appointments to the legislature for confirmation when that is part of the constitution. This is not without precedent may I say. The New Jersey Constitution which is reputed to be very short and concise and contains almost the identical language.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I will say a few words along the same line, that this is one of the essential powers of the executive that we felt should be included in the constitution and we feel, as Delegate Nordale has stated, that while an act could be passed it might be changed and altered materially through the years, and that the governor with a different composition of the legislature from time to time might be faced with difficult problems of making interim appointments. It seems to us in the Committee, essential that we provide the power for making interim appointments when the legislature was not in session and also provide that the governor could not make interim appointments, jump the time the legislature was in session and then make another interim appointment of the same man. This does take care of that situation.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, we are, apparently, all of the opinion that we should have a strong executive and we have therefore given to the governor the power of appointment not only of the boards but of all of his officers of principal departments and minor departments. I think the mere statement that this is the law that we have at the present time is sufficient to describe it as a statutory measure and as a statutory measure it does not belong in the constitution. Any attempt to put into the constitution, a law, an actual statute that is already in effect, can only be construed to mean that we are substituting statutory law for fundamental law, which is what the constitution should contain. That is why I seconded the motion.

PRESIDENT EGAN: The question is, "Shall the proposed amendment, deleting Section 18 from Committee Proposal No. 10/a, be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments? Mr. Taylor.

TAYLOR: I would like to offer an amendment to Section 18.

PRESIDENT EGAN: It has been deleted, Mr. Taylor.

TAYLOR: I will withdraw.

PRESIDENT EGAN: Are there amendments to Section 1 of Committee Proposal No. 10/a? Mrs. Nordale.

NORDALE: Mr. President, do I understand that that last amendment deleted the entire section? Then the governor has no authority to make interim appointments at all, is that correct?

PRESIDENT EGAN: Unless it is covered by statutory law, Mrs. Nordale.

The action of the Convention deleted Section 18, that is correct.

NORDALE: I just wanted to be clear on that.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: With respect to Section 17, lines 4 and 5, how do they read according to our Chief Clerk? Did we, in other words, amend that by providing with the advice and consent of the legislature in joint session?

CHIEF CLERK: That motion the other day that was adopted changes that automatically.

SUNDBORG: Is it the understanding of the Chairman of the Engrossment and Enrollment Committee that that will be done in each place where there is a mention of advice and consent of one of the houses?

SWEENEY: I have been making my corrections in ink when they have been adopted, and the one we were talking about this morning and also a couple of items in Section 18, where we added in "the legislature meeting in joint session"; we talked about those and I put them down just as question marks, and so my understanding is there has been no change made in 17 except this addition of "citizens of the United States and" in line 4. Now the journal can show different.

CHIEF CLERK: No, it does not.

SUNDBORG: We adopted a motion by Mr. Victor Rivers saying that it is our intention to have that language changed, but I believe we have to do it specifically, don't we, Mr. Rivers?

V. RIVERS: In this proposal it was the intention that where we mentioned "confirmation" and "advice and consent of the senate" that the words be changed to "legislature in joint session", in this Proposal No. 10/a.

SUNDBORG: Is that sufficient to carry the language right into the proposal in the view of the Chairman of the Engrossment and Enrollment Committee? Would you write that in, in view of the action that we took on Mr. Rivers' motion?

SWEENEY: Not unless the body adopted it. It was my understanding that it was not adopted by the body.

CHIEF CLERK: Do you want me to read the motion that was adopted on Saturday?

PRESIDENT EGAN: Please.

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SECTION 17. WHEREVER A BOARD OF COMMISSION IS AT THE HEAD OF A PRINCIPAL DEPARTMENT OR OF A REGULATORY OR QUASI-JUDICIAL BODY, THE MEMBERS THEREOF SHALL BE NOMINATED AND APPOINTED BY THE GOVERNOR, WITH THE ADVICE AND CONSENT OF THE SENATE, AND MAY BE REMOVED IN THE MANNER PROVIDED BY LAW. SUCH A BOARD OR COMMISSION MAY APPOINT A PRINCIPAL EXECUTIVE OFFICER WHEN AUTHORIZED BY LAW, BUT THE APPOINTMENT SHALL BE SUBJECT TO THE APPROVAL OF THE GOVERNOR.

SECTION 18. THE GOVERNOR MAY FILL ANY VACANCY OCCURRING IN ANY OFFICE DURING A RECESS OF THE LEGISLATURE, APPOINTMENT TO WHICH IS MADE BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF THE SENATE OR OF THE LEGISLATURE IN JOINT MEETING. AN APPOINTMENT SO MADE SHALL EXPIRE AT THE END OF THE NEXT REGULAR SESSION OF THE LEGISLATURE, UNLESS A SUCCESSOR SHALL BE SOONER APPOINTED

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AND QUALIFIED. AFTER THE END OF THE SESSION NO AD INTERIM APPOINTMENT TO THE SAME OFFICE SHALL BE MADE UNLESS THE GOVERNOR SHALL HAVE SUBMITTED TO THE SENATE A NOMINATION TO THE OFFICE DURING THE SESSION AND THE SENATE SHALL HAVE ADJOURNED WITHOUT CONFIRMING OR REJECTING IT. NO PERSON NOMINATED FOR ANY OFFICE SHALL BE ELIGIBLE FOR AN AD INTERIM APPOINTMENT TO SUCH OFFICE IF THE NOMINATION SHALL HAVE FAILED OF CONFIRMATION BY THE SENATE.

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CONSTITUTIONAL CONVENTION
COMMITTEE PROPOSAL/11
DECEMBER 15, 1955

REPORT OF THE COMMITTEE ON EXECUTIVE BRANCH

HON. WILLIAM A. EGAN
PRESIDENT, ALASKA CONSTITUTIONAL CONVENTION
DEAR MR. PRESIDENT:

THE COMMITTEE ON THE EXECUTIVE BRANCH PRESENTS FOR CONSIDERATION AND ADOPTION BY THE CONVENTION THE ATTACHED ORDINANCE ON THE FIRST ELECTION OF THE GOVERNOR AND THE SECRETARY OF STATE. A COMMENTARY EXPLAINING THE NEED FOR THIS ORDINANCE IS ALSO ATTACHED.

RESPECTFULLY SUBMITTED,

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(PAGE)/PAGE NUMBER: 137

CONSTITUTIONAL CONVENTION
COMMITTEE PROPOSAL/12
DECEMBER 15, 1955

REPORT OF THE COMMITTEE ON EXECUTIVE BRANCH

HONORABLE WILLIAM A. EGAN
PRESIDENT, ALASKA CONSTITUTIONAL CONVENTION
DEAR MR. PRESIDENT:

THE COMMITTEE ON THE EXECUTIVE BRANCH PRESENTS FOR CONSIDERATION AND ADOPTION BY THE CONVENTION THE ATTACHED ARTICLE ENTITLED GENERAL AND MISCELLANEOUS PROVISIONS; ALTHOUGH THESE PROVISIONS ARE OF PARTICULAR INTEREST TO THIS COMMITTEE, THEY WERE NOT INCLUDED IN THE PROPOSED ARTICLE ON THE EXECUTIVE BRANCH BECAUSE THEY HAVE APPLICATION ALSO TO THE OTHER BRANCHES OF GOVERNMENT.

A COMMENTARY IS ALSO ATTACHED WHICH EXPLAINS THE PURPOSE OF EACH SECTION.

RESPECTFULLY SUBMITTED,
VICTOR R
FRANK B
JOHN C
THOMA
MAYN

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BOSWELL: I withdraw my question.

PRESIDENT EGAN: The Convention will come to order. Mr. McNees.

MCNEES: May I call Mr. Boswell's attention to the explanatory article in our commentary relative to the section on impeachment. I think that will explain the situation and get us completely away from any controversy at the present time.

PRESIDENT EGAN: Are there other questions relative to the report of the legislative branch? Mr. Victor Rivers, as Chairman of the Executive Committee, would you like to give a summary of your particular proposal?

V. RIVERS: Yes, Mr. President. As I think all delegates have heard, the Executive Committee has worked on the theory of the strong executive. That was the intention throughout the article to centralize authority and responsibility for the administration of government, enforcement of laws, in a single elective official. Now there is the ideal which is set up by the model constitution. We have some variations on that. We have an elected governor and also an elected secretary of state. The procedure to be followed there would be to elect both of these officials on the same ballot as is done in the State of New York and as is done nationally. The governor's qualifications would be a minimum of 30 years of age, 20 years a citizen of the United States, seven years a resident of the Territory of Alaska. The term of the governor would be for four years, and he could hold office for two successive terms. At the end of that time he would have to have a four year break before he would again be eligible to run for the governorship. We have provided for the governor's replacement in case of a vacancy or in the case of his temporary absence from the state. His powers would be taken over by the secretary of state. We felt the second elected official was necessary in order that when there was a vacancy, an individual who was elected by all the voters of the whole Territory would still be eligible as his successor, both if a permanent vacancy occurred or if the absence was a temporary one. The secretary of state would not sit, under our proposal, as a president of the senate. He would have duties prescribed to him by law and by the legislature. The succession was one thing we had considerable discussion about. The succession would run from the governor to the secretary of state, to the president of the senate, to the speaker of the house, in that order. In the latter two, of course, they would be elected by a segment only of the electorate of the state. In regard to compensation for the governor it was to be fixed by law. The governor would have the strong power, power of appointing all his department heads. They would also be removable at the governor's will. He would also make the appointments for the multiheaded boards in case there are such, and some there probably will be. The executive secretary of any of the regulatory or quasi-judicial boards

could not be removed by the governor but removed in a manner provided by law. The purpose of that is that in a regulatory board, regulating the power rates, telephone rates, etc., the power of removal might be the power to make the office ineffective so that removal would be prescribed by the legislature. There are set up a maximum of 20 single department heads. The major departments would be limited to 20. That is similar, in parallel to the Hawaiian situation. Those departments were not named, the departments would fall into the classification or in a category set up in an organization chart of the state government. We have covered some other clauses that have to do with related matters, such as a civil service establishment under the administrative department of the state government, and we have included the necessary qualifications for disqualification for disloyalty and for taking oath of office which are more or less mandatory and probably not controversial. I think that covers generally the approach we have made to the executive. I might say that our Committee is not in entire agreement on certain points, but on the major approach however the Committee is in agreement. The other points that we are in disagreement on will probably come out more than once on the floor during the time that our proposal is being studied.

PRESIDENT EGAN: Thank you, Mr. Rivers. Are there any questions? Mr. Davis.

DAVIS: Awhile ago Mr. Rivers mentioned some other portions of this Executive Article. I thought it was said they had been passed out, but I don't seem to have them.

PRESIDENT EGAN: On Saturday they were read for the first time.

DAVIS: I do remember something being done with them, but I don't have them here.

HERMANN: It was referred to the Committee on Ordinances, and the other to the Rules Committee.

PRESIDENT EGAN: That is right, but the copies should have been made available for the delegates. Would the messenger see that Proposals No. 11 and 12 are made available to the delegates, copies of them. Mr. Buckalew?

BUCKALEW: What is Proposal No. 6. I don't have it.

CHIEF CLERK: Local government.

PRESIDENT EGAN: Local government. It will be out in just a few minutes. If there are no further questions at this time on the Executive Branch, we will proceed with the report of the Chairman of the Resources Committee. Mr. Smith.

SMITH: Mr. President, I would like to say first that a letter

before the commission could appoint and submit the name to the legislature for approval, but you also have to have the approval of the legislature, and in the case of judges you have a very similar situation under our new judiciary. The judicial council recommends a judge to the governor who makes a selection from two or more and then it is approved by the legislature. I see no variation in the method particularly.

PRESIDENT EGAN: Mr. Cooper.

COOPER: It does not say though that this executive officer is approved by the senate or any legislators. It is merely that the appointment shall be subject to the approval of the governor. There would be no appointment of a principal executive officer. There would be the appointment and the confirmation of the senate of the five members, that is what the board consisted of.

V. RIVERS: That's right. There would be no approval of the senate of the executive officer. I misstated, I was thinking of a board member.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. Rivers, did you consider the use of the expression "administrative board" instead of "quasi-judicial body"?

V. RIVERS: Yes, we considered a great deal of terminology there -- regulatory boards, nonregulatory boards, administrative boards, quasi-judicial bodies, and we tried to arrive at the wording which would most nearly express the intent and "quasi-judicial" means one more board exercising powers as we visualize it, that are semijudicial in nature and have certain powers to make rules and certain powers to make rules and regulations that might have the force of law.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: You are getting into the field of administrative law then, aren't you?

V. RIVERS: I presume that is the right place to put this matter.

PRESIDENT EGAN: Mr. Smith:

SMITH: Mr. President, I would like to ask Mr. Rivers, I am still not quite clear on what the difference between a principal department with a single executive, what the difference between that and the principal department under a board or commission. Now possibly I can make myself clear by referring to the Alaska Department of Fisheries. If that department were set up without a board, then would you say it was a principal department and

business and also knew the Territory and its people.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I notice that in the letter of transmittal to the President it mentions that Proposal No. 15 as being outside the terms of reference and not included in this and says it should be referred to another committee for consideration. I wondered what committee that had been referred to.

PRESIDENT EGAN: What was Committee Proposal No. 15?

HERMANN: Proposal by Mr. Smith that all the provisions of the constitution would be mandatory.

PRESIDENT EGAN: Would they have referred it to the Ordinance Committee, Mr. Rivers?

V. RIVERS: I don't remember, but our secretary has the minutes upstairs if you want it looked up.

PRESIDENT EGAN: I don't think that is necessary right at this moment, Mr. Kilcher.

KILCHER: Mr. President, in mentioning quasi-judicial boards in one place, don't you think mentioning that in the constitution would be sanctioning forever quasi-judicial boards, and don't you think that it is possible to solve all the problems that occasionally are solved by these quasi-judicial boards in a different manner, to split the duties between the executive and the judiciary as we have it? It is a vital question that has come up, and I wonder if the board has given it any special consideration.

V. RIVERS: Mr. Kilcher, consideration was given to the different types of boards, regulatory, administrative, and quasi-judicial. There seems among some of the delegates to be considerable opposition, or rather I should say, question as to the interpretation of the term "quasi-judicial", and it seems to be a point of some controversy. If that field of boards could be covered by another equally expressive term or more expressive term, I feel that possibly it should be, but in the lack of any other such term for that group of boards we felt that this one did cover it, "quasi-judicial".

KILCHER: Since "quasi-judicial" seems to have a fairly concise connotation, has the question come up whether they are desirable or not, and if they possibly were not desirable, if they could be prohibited in the constitution?

V. RIVERS: Well, there is nothing here that says any board, regulatory, quasi-judicial, or administrative must be established. It merely creates the authority for the legislature and defines the certain restrictions if such boards are established by law, so we make nothing mandatory in regard to establishment of quasi-judicial boards. That would be up to the legislature in making the law.

POULSEN: I move for a 15-minute recess.

PRESIDENT EGAN: Mr. Poulsen moves that the Convention stand at recess until 3:50. If there is no objection, the Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We now have before us Committee Proposal No. 10a in second reading and open to amendment. We will start with Section 1 for the purposes of amendment. Are there amendments to Section 1? Does anyone have an amendment to propose for Section 1 of Committee Proposal No. 10a? Section 2? Are there amendments to be proposed to Section 2? Mr. White.

WHITE: I have an amendment.

PRESIDENT EGAN: You may present your amendment, Mr. White.

WHITE: I think maybe I had better present it in two parts.

V. RIVERS: Before you take up that amendment, there are two minor committee amendments which I mentioned in the discussion. I would like to bring them to the attention of the body.

PRESIDENT EGAN: The Chairman of the Committee asks that the committee amendments be considered first. If there is no objection that is the manner in which we will proceed. The Sergeant at Arms will please bring the amendments forward. The Chief Clerk will please read the first proposed committee amendment.

CHIEF CLERK: "Page 1, line 11, place a period after the word 'governor' and strike the balance of the section."

BUCKALEW: Please read it again.

CHIEF CLERK: "Page 1, line 11, place a period after the word 'governor' and strike the balance of the section."

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

SUNDBORG: Mr. President, in view of Mr. Rivers' statement, I will withhold making my motion until the body decides whether it does wish to constitute the office of attorney general.

PRESIDENT EGAN: Are there amendments tc Section 14? Mr. Buckalew.

BUCKALEW: I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment to Section 14.

CHIEF CLERK: "Line 23 and line 24, page 6, strike 'quasi' and 'judicial'."

PRESIDENT EGAN: Mr. Buckalew, what is your pleasure?

BUCKALEW: Mr. President, I move its adoption. Also, strike the "and".

PRESIDENT EGAN: If there is no objection, it may be added to the amendment.

BUCKALEW: I move its adoption, Mr. President.

PRESIDENT EGAN: Mr. Buckalew moves the adoption of the proposed amendment.

AWES: I'll second the motion.

PRESIDENT EGAN: Miss Awes seconds the motion. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 14, line 23, page 6, strike 'and quasi' and line 24, strike 'judicial'."

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: The reason I introduced this amendment is for the reason that there has been a dangerous tendency in the last 20 years to establish all kinds of boards that act almost in the capacity of a court. They have the power to fine, revoke licenses, and take all kinds of action. I think that it is setting a dangerous policy in the constitution to mention "quasi-judicial" boards with no limitations on it at all. I am opposed to quasi-judicial bodies and looking at this section with the rest of the sections, it seems to me you find yourself in the position of where you would have a fisheries board, for example, and then have at the same time have a board going

leg

along with it which would be regulating fisheries, imposing fines and taking care of the violations under the regulations of the fishing boards. I think the language should be stricken.

V. FISCHER: May I ask Mr. Buckalew a question, Mr. President?

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

V. FISCHER: What does "quasi-judicial" mean? I know what "judicial" means, but what does the "quasi" mean?

BUCKALEW: I don't know exactly what it does mean, and I doubt if any lawyer in the body knows exactly what it means. It is a board that has fact-finding power and at the same time, it has the power to support its findings with some sort of punitive action so it's sort of a court, except it doesn't have the same kind of jurisdiction, but it is a combination -- I can't explain it. Mr. Hellenthal, can you?

PRESIDENT EGAN: The Convention will come to order. Mr. Hellenthal.

HELLENTHAL: It is precisely what Mr. Buckalew says it is. It is a board that has very limited functions, ordinarily assumed by specialized courts and within definite limitations so that there can be no abuses. The Interstate Commerce Commission is a very fine example of a quasi-judicial board. A utility commission is another excellent example, where they can prescribe fines for violation of utility regulations, but within a limited sphere. They can't execute you, they can't send you to the penitentiary. They can prescribe fines within a sphere set by the legislature, so there is no danger of anybody running away with anything, but the advantage of specialization is secure and that is why the quasi-judicial boards are created, so that expert men, in their fields, can interpret the laws of the legislature subject to checks imposed by the legislature.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I would like to follow up with Mr. Hellenthal. He said a utilities board would be quasi-judicial. What is the difference then between "regulatory" and "quasi-judicial"? To me a utilities board would be regulatory.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: Perhaps I can explain it in the terms best known to Alaskans. Very roughly, the Fish and Wildlife Service and the

CAB, the Fish and Wildlife Service can set down regulations. Normally if there is an infraction of those regulations, they pick up the offender and deliver him to a judicial body, that is to the United States Commissioner, or to the United States District Court. They have no power of absolute confiscation on their own, no power to deprive of money or rights. In the case of the CAB, the Fish and Wildlife, in substance then, sets down regulations, but in the case of the CAB, they go further than that. In substance, they determine as between carrier and carrier, who is privileged and who can be deprived of it. I think if you strike, it would be erroneous and possibly fateful if we strike that word "quasi-judicial" because as Mr. Hellenthal has mentioned, in the national sphere you have the RCC, FCC, things that are important and material to us. You might even destroy the possibility of ever creating an alcoholic beverage control board under the state, and dependent on your viewpoint that is good or bad, but I would recommend that it be kept in there, if at any time it becomes an intrusion upon the judicial power, I am sure that all of those non-partisan judges of the superior and supreme court will rise up and destroy it under the constitution.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. President, I have a question of Mr. McLaughlin, if I could ask it.

PRESIDENT EGAN: State your question.

GRAY: Mr. McLaughlin, I want to put this question to you. Do you have any recourse from the judgment of a quasi-judicial board by the courts, or is their action final?

McLAUGHLIN: No, their action is never final, particularly under our judiciary article.

PRESIDENT EGAN: Miss Awes.

AWES: I just wanted to state that I seconded the motion when it was made because I thought it was a matter that should be brought on the floor and open for discussion, but I don't want my second to be taken as approval of the striking of the word.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, in connection with this, two of the delegates who are on the Committee have checked the meaning of the word "quasi-judicial". According to the interpretation of Webster's, which was checked and brought up by Delegate Nordale, the interpretation is given in reference to "quasi" when used

as a prefix means, "that which resembles". "Quasi-judicial, designating an act or proceeding of or before an administrative tribunal or official of the general nature of a judicial act or proceeding but not within the judicial power as defined under the Constitution." Now that is a broad interpretation of the term as we use it here, and it is the interpretation of Webster. However, Delegate Londborg has also looked the matter up in Black's Law Dictionary and it is practically the same. Do you have that here, Mr. Londborg?

LONDBORG: No, I don't.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: May I ask Mr. McLaughlin a question, or anyone else who would care to answer it?

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

HURLEY: If the amendment carries, and the wording is struck, it would read: "Regulatory bodies and temporary agencies..." In your opinion, if that were the case, would "regulatory bodies" imply that the legislature could, in setting up such regulatory bodies, give them quasi-judicial powers.

McLAUGHLIN: I think it could, but in view of Mr. Buckalew's attempt to strike it out, at any time when the courts go back to read the constitution, they see that Mr. Buckalew presented an amendment striking the word "quasi-judicial" on the grounds that they were getting too big and intruding on government, and they might interpret it as abolishing the right, that is abolishing the right of the legislature to create quasi-judicial bodies.

PRESIDENT EGAN: Mr. Davis.

DAVIS: I would support Mr. Buckalew's amendment, not on the ground that the agencies are too big or not desirable, but because the thing is adequately covered in the other word used.

PRESIDENT EGAN: Mr. Emberg.

EMBERG: Mr. President, I would like to put a question before the body here. Under the language of this sentence, would it be possible to set up a board which was both regulatory and at the same time a quasi-judicial body? That is what I would object to.

PRESIDENT EGAN: Mr. McNealy.

McNEALY: Mr. President, I want to speak in favor of the amendment, just on the point that Mr. Emberg raised, and as to the

interpretation of the words "quasi-judicial body", I think you'll find in the law, and I believe when I mention it that the greater share of the attorneys here will agree with me, we speak of "quasi-contracts" which are, in effect, contracts implied by law and the greater share of your court's interpretations which go further than the dictionaries here, would be to the effect that the word "quasi" here, in effect, means that it is an implied judicial body. I won't enlarge on it anymore than that, but I fear this one thing, that the nomination of regulatory and quasi-judicial bodies raise a condition such as, I'll only mention one, such as the Game Commission which can set up their own rules and regulations, send out their own men to enforce them, and I am very much in favor of game conservation and the game commission, but the abuses that we have known of that right here in the Territory and specifically in the Fourth Division where it was necessary while I was district attorney, to take issue with the Game Commission because they did set up their own laws, they felt that it wasn't necessary to abide by the laws of search and seizure. They went out and broke the locks of cabins and caches, went in and searched for furs that they thought might be there, that were improperly caught, or caught too great a number. I'm not going off on that subject because it would take a half-hour to cover all of the violations that did happen and were possible under that, and in which I believe have to a great extent been simmered down, and some of the matters were resolved against the Game Commission at that time. Now there are others that are even greater offenders than the Game Commission and I speak of them, and I back the Game Commission 100 per cent in their purpose, but the point is that if you have the words "regulatory and quasi-judicial bodies" combined here, I fear very much that it is going to open it up where you are going to establish boards that not only set up the laws, but they enforce them, and when you do you are combining legislative, executive and judicial all in one branch and it is a dangerous situation, and I feel that I am starting to get a little steamed up on this. I ought to close on a bit of humor here. I believe that I should be against the amendment on the theory that the legislature might be able to set up some implied courts in opposition to Mr. McLaughlin's judicial system.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I wish to support Mr. McNealy's views on that. I, too, question the language there, but before I start, I would like to direct a question to Mr. McLaughlin, if I may.

PRESIDENT EGAN: You may, Mr. Peratrovich.

PERATROVICH: I just want to know, under this setup, the language used here, is it possible to limit powers of such a body? Is there a way that you can regulate the powers of such a body?

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I'll put it this way, this does not direct the legislature to create these bodies and it is my personal opinion that you could not attempt to define in the constitution the limitations of the powers on the regulatory or the quasi-judicial bodies. It would be an impossibility, because the vagueness of the term would require great definition and precision. Do I think that quasi-judicial bodies are necessary? I definitely do. I think if you specifically prohibit them in your constitution, you are hamstringing yourself. The legislature won't be able to create the boards that are necessary. You will have to rely on the discretion of the legislature that they will appoint the appropriate body, and the only difference then is that they will be our collection of thieves rather than those of the national government.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I would like to relate some experiences in support of what Mr. McNealy has related to you. I can't help but feel there is a possibility of abuse of power in such a setup. In the experience I have had is in the case of game wardens and the fisheries, like Mr. McNealy relates. We have known of cases in our division where our fishermen with some fish aboard, say with perhaps 300 or 400 fish aboard caught just before darkness and go inside of the line and anchor. There would happen to be a good harbor there, and perhaps during the night the fisheries commission warden would come in there and this man is pinched and if you can't defend yourself, if you can't talk and try to reason with a warden, then you're picked up and taken into the commissioner's court. I don't say they're convicted in all cases, but it does require time to prove that you are innocent. On the other hand, if a trapper is out on his line, on his boat, anchored in the bay, he is perhaps out on his trap line. When he comes back, he finds his hatch covers all off, his food lockers all open and everything else, and that is another case of where a game warden comes along on a plane and takes the liberty of going aboard to see if they had any illegal meat, fur or something of that nature. I feel that under a setup of this type, we don't have a way of regulating their duties. I don't think we can remedy what has transpired under our former government.

PRESIDENT EGAN: Mrs. Nordale had been attempting to get the floor. Mr. Hellenthal.

HELLENTHAL: May I ask a question of Mr. Peratrovich?

PRESIDENT EGAN: If there is no objection.

HELLENTHAL: Don't you, Mr. Peratrovich, and Mr. McNealy, both feel though that those poor regulations were due to Congressional action, and that an Alaska state legislature would never permit such a situation?

PERATROVICH: I agree with you, but I want to make it clear here, that I for one don't understand the terms that you lawyers use here, but I can see very dimly that there may be a possibility of correcting the errors that we have made under our Territorial setup. If we could remedy that under the state setup, then that is what I am for, and that is the reason I want to make it clear here. I am satisfied with your explanation.

PRESIDENT EGAN: Does anyone want the floor that hasn't had the floor? Mr. Ralph Rivers. Haven't you had the floor?

R. RIVERS: Not on this subject. I have refrained up to this point, but bearing on this is the proposition that we are talking about whether regulatory and quasi-judicial bodies shall be placed in principal departments or whether they shall be placed out of principal departments. If we knock out the word "quasi-judicial", the legislature could still create quasi-judicial departments but would simply be making principal departments out of them instead of keeping them out of the principal departments. I was going to make the same point that Mr. Hellenthal made, that we can't get to first base protesting some of the abusive enforcement methods of an agency that is created back in Washington, that we would have to go back to Congress to get remedial measures, but after we have our own legislature here, which will have the power to create these bodies, even if we do strike the word "quasi-judicial" from this particular article, we have a legislature near at hand meeting every two years where the citizens can go down and complain about how this state agency is taking this highhanded method or the other, so if we need to leave this in the hands of the legislature, let's trust the legislature to put in the suitable restrictions and go to the legislature with our complaints every two years when the time comes.

PRESIDENT EGAN: Miss Awes.

AWES: The Convention expressed the desire to adjourn about 3:45 so they could catch the bus at 4:05, and I think that clock has stopped. Mr. Marston and I both have 3:50.

PRESIDENT EGAN: Whether or not we can get to this amendment by then, we'll see. The question is, "Shall the proposed amendment as offered by Mr. Buckalew be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will

executive orders of the governor which may change the assignment of functions among the departments, and I am wondering just what force they would have in law, for example, where they contravene some law that might have been passed by the legislature saying that the function of a certain department shall be thus and so and then the governor issues an executive order which says here that it will become effective at the close of the next regular legislature. What happens to the law on the books? Is it of no avail?

PRESIDENT EGAN: Mr. Rivers.

V. RIVERS: Mr. President, I am pleased to answer that question because it is one that we discussed at some length in the Committee, and in regard to organizational efficiency of the executive department, the governor would be able to recommend this change in his executive order. It would not become effective until after the legislature had reviewed it and could then take an action upon it. It is the same clause that goes along with, of course, the idea of the strong executive. It is also the same clause that is used in a similar manner for the reorganization powers of the President of the United States. It does give him the power to alter existing organizational structures that have been set up by law, but only after the legislature has failed to say "No, we won't let you do that."

SUNDBORG: Don't you feel we have to specifically give those orders the force of law in the constitution or otherwise before they could contravene an act of the legislature?

V. RIVERS: We discussed that and thought this wording would cover it by and with the advice and also discussion with more than one consultant on the matter. Occasionally there is a body within the organizational administrative setup of government where they have the power of making rules that have the force of law, and it was thought this wording covered it. Of course, none of the rules that are upset or changed, or become law are actually accepted until the legislature fails to take a positive repealing or negative action.

SUNDBORG: Would the governor have the authority, and I assume he would, to veto an act of the legislature which would undo one of these executive orders of his? If not, should we not say so?

V. RIVERS: This is a resolution, not an act. They would do it by resolution if they did not approve, and he has no veto power over a resolution. That is a joint action of the house or the two houses independent of any governor's approval in connection with resolutions as I understand it.

SUNDBORG: Does any state have a provision such as this?

V. RIVERS: I believe there are some of the newer state

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Buckalew, deleting the words 'and quasi-judicial' from Section 14 of Committee Proposal No. 10/a be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Mr. Robertson.

ROBERTSON: I would like to ask the Chairman, Victor Rivers, why is the word "administrative" omitted from that particular sentence? You refer to "administrative" in line 1 of Section 14, why don't you have the word "administrative" in there?

V. RIVERS: Which sentence is that, Mr. Robertson?

ROBERTSON: In line 23, "regulatory and quasi-judicial bodies", why shouldn't you have the words, "regulatory, administrative, and quasi-judicial bodies" in there?

V. RIVERS: Well, as I understand it, it is our understanding that administrative bodies as a group should be under principal departments and this would make it possible to exempt them. Certain classes of administrative bodies, such as regulatory, quasi-judicial, and temporary need not be for the purposes of efficient administration, all of the major administrative bodies would fall under a principal department. That was the Committee intent.

PRESIDENT EGAN: Are there other proposed amendments to Section 14, 15, 16? Mr. Riley.

RILEY: I have an amendment on the Clerk's desk.

PRESIDENT EGAN: The Chief Clerk may please read the proposed amendment as offered by Mr. Riley to Section 16.

CHIEF CLERK: "Section 16, page 7, line 21, strike the last sentence." Is that right?

RILEY: Yes. Mr. President, I move its adoption.

PRESIDENT EGAN: Mr. Riley moves the adoption of the proposed amendment.

GRAY: I second it.

PRESIDENT EGAN: Seconded by Mr. Gray. Mr. Riley.

RILEY: Mr. President, to a degree we have considered this problem with respect to the article submitted by the Committee on the Judicial Branch, and it is my memory that on that occasion quite a bit of discussion occurred, and it was the feeling of the body that we should not deprive ourselves of the services of

PRESIDENT EGAN: Mr. Cooper.

COOPER: I raised a question on this Saturday also. It says "...at the head of a principal department or of a regulatory or quasi-judicial body..." Therefore, I feel that all boards or commissions eventually would be classed within those three limitations and that the governor would have to approve the appointment of the executive officer, and I agree with Mr. Walsh and others that eventually politics can possibly enter into some board or commission where it has no point of being and I support the amendment.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: I would just like to say that I do not consider education or anything else a "holy cow". It is a function of this state. It is part of the general administrative organization, and I do not believe that it deserves any kind of special treatment. I think that the commissioner of education should possibly be appointed by a special board of education, a non-partisan board. At the same time, however, that commissioner will have to work with the governor. He will have to work with other department heads. For instance, the commissioner of education, I do not believe it would be right to leave the way open for the appointment of a commissioner of education who will just be separate from the general executive branch of the state and from that standpoint I am very much opposed to the amendment, and I stand by the article as it is written.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: May I ask a question of Mr. Victor Rivers?

PRESIDENT EGAN: You may.

HELLENTHAL: Mr. Rivers, would you have any objection if specific language excluding the University of Alaska were included in the section?

V. RIVERS: Mr. Hellenthal, I will stand by the committee report in this matter. It is one of the things we discussed at length. We feel we have solved it adequately and properly, and I would not care to see a specific inclusion, or exclusion made. I speak for myself and I think for the whole Committee on that.

HELLENTHAL: For example, would you object to saying, "Provisions of this section shall not be construed to apply to the board of regents of the University of Alaska."?

V. RIVERS: I would object. I understand that there is going to be brought in in connection with the actual indication of the University of Alaska as a state university, and if there

GOVERNOR'S DUTIES DURING THE TEMPORARY ABSENCE OF THE GOVERNOR.
SECTION 10. EXECUTIVE POWERS.)
THIS SECTION MAKES THE GOVERNOR RESPONSIBLE FOR THE FAITHFUL

EXECUTION OF THE LAWS AND GIVES HIM POWER TO DO SO THROUGH THE COURTS AND BY OTHER MEANS. IT AUTHORIZES HIM TO MAKE RECOMMENDATIONS TO THE LEGISLATURE AND TO CONVENE THE LEGISLATURE OR THE SENATE ALONE WHEN HE DEEMS IT NECESSARY IN THE PUBLIC INTEREST. CONVENING THE SENATE ALONE MIGHT BE NECESSARY TO OBTAIN SENATE CONFIRMATION OF APPOINTMENTS.
(SECTION 11. ARMED FORCES OF THE STATE.)
THE PURPOSES FOR WHICH THE GOVERNOR MAY CALL OUT THE ARMED FORCES OF THE STATE ARE THE SAME AS THOSE CONTAINED IN MANY STATE CONSTITUTIONS. THE AUTHORITY OF THE GOVERNOR TO APPOINT
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OFFICERS OF THE ARMED FORCES IS MADE SUBJECT TO APPLICABLE LAW OF THE STATE AND THE UNITED STATES.
(SECTION 12. MARTIAL LAW.)
THIS PROVISION CONFERS AUTHORITY TO DECLARE MARTIAL LAW AND AT THE SAME TIME LIMITS THE SITUATIONS IN WHICH THE AUTHORITY CAN BE EXERCISED. IN ORDER TO CONTINUE MARTIAL LAW FOR LONGER THAN 20 DAYS, THE APPROVAL OF A MAJORITY OF MEMBERS OF BOTH HOUSES OF THE LEGISLATURE IN ATTENDANCE AT A JOINT SESSION WOULD HAVE TO BE OBTAINED, AND IF THE LEGISLATURE WERE NOT IN SESSION AT THE TIME, THE GOVERNOR WOULD HAVE TO CALL IT INTO SPECIAL SESSION FOR THE PURPOSE.
(SECTION 13. EXECUTIVE CLEMENCY.)
THE POWER CONFERRED BY THIS SECTION IS SIMILAR TO THAT CONFERRED BY MANY STATE CONSTITUTIONS ON THE CHIEF EXECUTIVE OF THE STATE.
(SECTIONS 14 - 17. ORGANIZATION.)
A CLEAR DISTINCTION IS MADE BETWEEN THE ADMINISTRATIVE DEPARTMENTS, SUCH AS PUBLIC WORKS, HEALTH, EDUCATION, AND WELFARE, AND THE REGULATORY, INCLUDING QUASI-JUDICIAL, BODIES SUCH AS A RATE-SETTING PUBLIC UTILITY COMMISSION. THE HEAD OF AN ADMINISTRATIVE DEPARTMENT, WHETHER SINGLE OR MULTIPLE, CAN BE REMOVED AT ANY TIME BY THE GOVERNOR. THE MEMBERS OF REGULATORY BODIES CAN BE REMOVED ONLY IN THE MANNER PROVIDED BY LAW. IN
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ORDER TO ENSURE MAXIMUM COORDINATION OF STAFF SERVICES, THE APPOINTMENT OF AN EXECUTIVE DIRECTOR FOR A REGULATORY BODY REQUIRES THE GOVERNOR'S APPROVAL. THE APPOINTMENT AND REMOVAL OF AN EXECUTIVE DIRECTOR OF ANY ADMINISTRATIVE DEPARTMENT WHICH IS HEADED BY A BOARD ARE LEFT TO DETERMINATION BY LAW. THE GOVERNOR CAN FROM TIME TO TIME BY EXECUTIVE ORDER, REORGANIZE GOVERNMENTAL AGENCIES PROVIDED THAT ANY SUCH EXECUTIVE ORDER SHALL NOT BECOME EFFECTIVE UNTIL A FULL REGULAR SESSION OF THE LEGISLATURE HAS BEEN HELD AFTER THE ORDER IS ISSUED AND HAS NOT DISAPPROVED IT BY A MAJORITY OF BOTH HOUSES IN JOINT SESSION ASSEMBLED.

CONSTITUTIONAL CONVENTION
COMMITTEE PROPOSAL/10/A
JANUARY 12, 1956

REVISED REPORT OF THE COMMITTEE ON EXECUTIVE BRANCH
HON. WILLIAM A. EGAN, PRESIDENT
ALASKA CONSTITUTIONAL CONVENTION
DEAR MR. PRESIDENT:
THE COMMITTEE ON THE EXECUTIVE BRANCH PRESENTS FOR CONSIDERATION AND ADOPTION BY THE CONVENTION THE ATTACHED ARTICLE ON THE EXECUTIVE BRANCH. A COMMENTARY EXPLAINING THE
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