

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9225 HOUSE JUDICIARY

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HELLENTHAL: I hesitate to talk on this because I think this is a wonderful enactment, and this is the only amendment that I have to offer to the entire matter, but I think it is basic. Now, therefore, I should like the indulgence of the delegates. Now, at the outset I favor a strong executive, never an absolute executive, and I don't think that the amendment would call for an absolute executive. I favor that the attorney general be appointed, that all other department heads be appointed, and I have no other amendment to offer. I do not intend to follow this up, to use this as a play to get the attorney general elected, no. I believe in a strong executive. Now, this proposed proposal has many implications. Mr. Buckalew used the word "deal" several times, and the political implications are not encouraging in this proposal.

PRESIDENT EGAN: Do you mean in this section?

HELLENTHAL: In the committee section, yes. I dispute the fact that the secretary of state would be elected by the people, which was stressed. It would not be exactly by the people. It would be a package deal. You would have to take him along with the governor, kind of a "buddy" system in the state, and the people would have nothing to do other than to elect their delegates at a caucus to the political convention, which would choose the "buddy", and I don't think that is very good. I don't think that is very good at all. Another point is this: It is a unique plan. Only one state in the entire United States seems to favor this system. Now, seven or eight, it is true, elect their secretary of state, but the "buddy" system is only found in one state. Now, why not just simply, and I don't think language is even necessary in the constitution, why don't we just let our governor hire someone to help him and fire him when he does not want him. Let him hire such other administrative assistants as he wants. What is wrong with that? It is conceivable that these pals might split up some time, that has happened before in politics, and go in different directions. Then where would we be? I don't particularly like this amendment, rather this section, and I don't think the alternative is despotism. I think that if we permit the governor to hire his assistants that we will secure

efficiency; we will eliminate a tendency towards a rather undesirable political scheming process, and I think that we will bring about much better government.

PRESIDENT EGAN: Is there anyone else who has not been heard who wishes to be heard? Mr. Harris.

HARRIS: Being on the Committee that helped devise this plan, that we are now working over, we took quite a few things into consideration before adopting this particular plan. In the first place, under our apportionment article, which we knew something of before we adopted this plan, there has to be some succession.

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NORDALE: Mr. President, I feel too that this should be given a little more thought, but I would like to say this: When we started, and I think the Committee members will agree with me, we were quite pleased with New Jersey because we felt it was a modern constitution and in New Jersey the governor is the only elected official. No other official is mentioned, I believe, except for perhaps a limitation on his being removed from office or something of that sort. But feeling that perhaps there were people in Alaska who felt that they wanted to elect the lieutenant governor or the succeeding officer, we introduced this idea of having two people who would run together, and so we devised this particular system to try to keep from weakening the governor and still please the people who might want to vote for his successor.

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NORDALE: Mr. President, I seem to be doing a lot of the talking. One of the reasons we called this particular official a secretary of state was that we did not want to have a lieutenant governor sitting and doing nothing. Now if you don't let the legislature prescribe something for him to do, he is going to be, in effect, a lieutenant governor, and the legislature could very well set up a department under somebody who is not called a secretary of state who would do all the work that a secretary of state normally does, and we would be right back with a lieutenant governor that most states are saddled with.

McLAUGHLIN: Mr. President, I'm in favor of Mr. Buckalew's motion to strike that on the theory that if we are going to have a strong executive, I believe that the executive should not be burdened with a crown prince who substantially would be dictated by the

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body that runs or supports the governor. Normally, that second-in-command is someone who is picked, not because of ability, but because of political considerations. He inevitably will come from a different part of the state, or

appeal to that class of voters which the candidate for governor does not appeal to. It's a history of the Vice Presidency, and I suspect it would be the history here. We would not have as a successor a strong secretary of state; he would make a poor governor largely because the consideration of his selection would be political. On the other hand, I believe that the governor has a right, after election, to appoint him; I also believe in conformity. I also believe that if we are going to have an elective governor that he should appoint every member of his cabinet, and that includes the attorney general. That is, you give him the power, if you vote for him and him alone, and not on the basis of the man who is supporting him, I believe that you will get an independent strong governor. And if you give him the power to appoint all of his cabinet, then in effect what you have done, you make him run on his record, but if we are going to talk about a strong executive and then dilute the thing by permitting every other cabinet member to run, you haven't got a strong executive at all, and apparently many of the decisions that we made here prior to this have been based upon the assumption that we should have a strong executive. I will vote for Mr. Buckalew's amendment on the theory that it will make the executive strong.

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Judge Stewart: Gentleman, this is a subject that I've contemplated and been concerned about for at least 50 years and in the course of that time I have become adamantly opposed to the idea of electing the attorney general. In order to express adequately my views, it's desirable to go back to the very roots of the scheme of American government, both state and national; the idea of three separate branches with checks and balances among and between them. I propose to address the subject at several levels: the basic theory; Alaskan governmental history; personal and practical experience with the alternative systems; leading opinions of prominent students of the subject; observation on consequences of such a scheme; explanations of examples from other states; and miscellaneous observations.

The basic theory is set out in The Federalist, in the papers written by Alexander Hamilton, primarily No. 70, dated March 18, 1788.

"There is an idea, which is not without its advocates, that a vigorous executive is inconsistent with the genius of republican government. The enlightened well wishers to this species of government must at least hope that the supposition is destitute in foundation; since they can never admit its trials without at the same time admitting condemnation of their own principles...."

It is worth noting that word "republican" with a small "r". Ours is a government of representatives, not a true democracy, which would be like a New England town meeting, where all the townspeople gather to discuss and vote on the issues. Obviously, this is not possible at the national level, nor in large cities, nor in the whole State of Alaska. The critical complex decision, such as on the structure of the executive branch, must be made by the representatives of the people, and that is you.

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MAR 11 1997

Attorney Generals Office  
Juneau

"...Energy in the executive is a leading character in the definition of good government. It is essential to the protection of the community against foreign attacks: it is not less essential to the steady administration of the laws, to the protection of property against those irregular and high-handed combinations, which sometimes interrupt the ordinary course of justice, to the security of liberty against the enterprises and assaults of ambition, effaction and of anarchy.

A feeble executive implies a feeble execution of the government. A feeble execution is but another phrase for a bad execution: and a government ill executed, whatever it may be in theory, must be in practice a bad government.

The ingredients which constitute energy in the executive are unity - duration - an adequate provision for its support - competent powers. The ingredients which constitute safety in the republican sense are, a due dependence on the people - a due responsibility.

Those politicians and statesmen, who have been the most celebrated for the soundness of their principles, and for the justness of their views, have declared in favor of a single executive and a numerous legislative. They have with great propriety considered energy as the most necessary qualification of the former, and have regarded this as most applicable to power in a single hand; while they have with equal propriety considered the latter as best adapted to deliberation and wisdom, and best calculated to conciliate the confidence of the people, and to secure their privileges and interests.

This unity may be destroyed in two ways; either by vesting the power in two or more magistrates of equal dignity and authority; or by vesting it ostensibly in one man, subject in whole or in part to the control and cooperation of others, in the capacity of counsellors, to him. Of the first, the two counsels of Rome may serve as an example; of the last we shall find examples in the constitutions of several of the states."

The Constitutional Convention delegates debated this issue intensely. It was the single focus of the committee on the executive branch. In addition, the full Convention itself intensely scrutinized it for at least one full day. Committee debates during the Convention could not be recorded, therefore Mr. Baldwin's transcript is of the debate by the full Convention. The delegates were lead by George McLaughlin who said:

The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is (I think there was an omission here -- "barely") worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it.

The concept of an attorney general's opinion must not be confused with a judicial opinion. A judicial opinion covers two sides - and reviews adversarial treatment of an issue, and is binding. That does not happen in an AG's opinion - no one is bound by an attorney general's opinion.

There is a good example of the exercise of energy by the Governor. Alaska spent millions pursuing claims against oil companies. Governor Hickel and Attorney General Cole settled those cases through an energetic exercise of authority. That kind of energy would be frustrated if the two positions were at odds. The decision to settle was a policy decision and a loyal attorney general executed it for the Governor.

The Governor is the person charged by the people to fix and carry out state policy. The Governor is accountable to the people. An elected attorney general could undercut the Governor and hinder his ability to execute policy. If an attorney general cannot support the governor's policy, he must resign.

There are many authorities opposed to electing the attorney general. Thomas Dewey, a friend of Ernest Gruening, was defeated by Harry Truman in 1948. He came to Alaska to visit Gruening and knew statehood was sought. His advice was, from his experience as Governor of New York, "not elect the attorney general." Jay Hammond is adamantly opposed to the election of the attorney general. Recently, he was my houseguest for several days, and we discussed this matter. He said that although he was a Republican, he appointed Av Gross, a Democrat, as Attorney General, knowing of his abilities. Republicans objected, but Gross was one of the best attorneys general.

There is a good analogy. A corporation, such as IBM, hires a CEO to fix and carry out the policies of the Board of Directors. The CEO can be likened to the Governor, while the Board of Directors to the Legislature, and the stockholders to the general public. If the chief counsel to the CEO were to be elected by the stockholders, it wouldn't work because

stockholders are simply not able to determine who should be in that position.

TAPE 97-13, SIDE B

We have this big enterprise of the State:- to have its chief counsel elected by thousands upon thousands of people who can't possibly know the merits of the individual candidates for elected attorney general and could not possibly be a reliable determinant of who ought to be the Governor's counsel.

I hear it said, "But there are 40 states that elect the Attorney General." In order to understand that, we need to look at history. Those provisions were put there in the 19th Century. It may be that there are one or two in the early part of the 20th Century but the modern Constitutions of the 20th Century do not do that, because they have the benefit of hindsight and saw the problems that evolved from this kind of a governmental structure. Probably the leading Constitutional Convention was that of New Jersey, which I think was in 1946, and New Jersey did exactly what we subsequently did, and structured an executive branch with a single unified head who can choose who should be his associates and who then is held accountable, responsible to the electorate for what he does. As I said earlier, it's a mistaken notion somehow of democracy - that somehow the people are going to get a representation that is more democratic - small "d" - if they elect the attorney general. Believe me, it's not so. That's a failure to understand the role of the attorney general. Citizens from the street can't go in and ask the attorney general for an opinion. He would say, "That's not my job." Surely, he represents the people but he only does that through his boss, the Governor, who likewise represents the people, more broadly than he does.

There's another aspect to it. If you elect the attorney general, that cuts across the entire spectrum of the executive branch.

It affects the opinions that are given to each and every department, each and every functionary in the executive branch. When I was an assistant attorney general - there were two of us at the time - a gentleman named John Dimond and I were the assistant attorneys general. And we saw our boss, J. Gerald Williams, interpose his own policy ideas, inject them into the operations of the departments he was giving advice to without any regard for what the Governor's ideas might be on that subject. Such a person is just as likely to adopt his own ideas, his own philosophy, and be no more representative of the people than the Governor is.

There's a corollary to this that I don't know whether you've ever looked at. The history of Alaska, the government of Alaska, has been that the Legislature looks to the Attorney General for opinions. I'm here to suggest to you that that's wrong. You should have your own counsel. The Senate should have its own counsel; the House should have its own counsel, because sometimes the ideas of the Senate and the ideas of the House are not commensurate. You need independent legal advice. You should not be looking to the opinions of the attorney general as your authority on the law that you want to deal with. Even if you don't create a full time position, even if you only had contract counsel, you should have counsel whose loyalty is to you as his client. Any of you that have reason to consult with attorneys know that your attorney must be loyal to you, and this proposition, this SJR 10, would render the Governor having an attorney who is not loyal to him, and that simply doesn't work. It would be, in my view, one of the single most damaging things that you could possibly

do to the structure of our state government, which I think has been highly successful since we became a state in 1959. That would be disrupted forever.

It's not the kind of a proposition you can put out to the people. We have a republican form of government. It's your responsibility to make this decision. It's the kind of thing, maybe I have suggested to you, the degree of sophistication, historical knowledge, philosophical concepts, if you will, that are required to penetrate this maze, to get beyond that simplistic, naive statement: the attorney general represents the people. Surely he does, but through the medium of his governor, not directly. This kind of a proposition, as I say, put out to the voters at large; how can you adequately explain it? The newspapers wouldn't do it for you. The Anchorage Times had an editorial on this proposition about three weeks ago and I read it, and I became immediately, deeply concerned. It's come up not infrequently over the last 35 years.

I happened to get well acquainted with a gentleman named Bill Allen, who is the CEO of VECO, also the owner of the Anchorage Times. I called - (I sat with him through several days of meetings on the Governor's Advisory Task Force on Tort Reform during the fall). I had never known him before and I got acquainted with him, so I called him and said, "Bill, I need to talk with you about this editorial. I think that you may not really understand all of the implications of what's being proposed." And so I have an appointment to sit down with him next Monday. I hope to enlighten him a little bit on all that's involved here.

There's another danger, and having sat, as you people do, on a legislative committee, I'm extremely sensitive of it, and aware of it. This proposition goes to the very heart of the structure of our government. You cannot possibly adequately

consider it, unless you reject it, as I hope you do, in the course of an afternoon, in the course of listening to two or three bozos like me. You cannot just talk about it. It requires careful thought and study.

Let me divert for a moment. About four years ago, a little more than four years ago, there was a proposition put before the Legislature, to amend the Constitution by the initiative. This, likewise, was deeply disturbing to me because initiatives do not get the crucible of treatment that you people are able to give to legislative measures. You get bad law from the initiatives. You get bad constitutional amendments. Look at the Budget Reserve amendment. Have you tried to read that and make sense of its language? That's the kind of thing that emanates from inadequate, surface treatment of this kind of a subject. Ramona Barnes was the Speaker at the time that was introduced, and she asked Gail Phillips, and me, and a gentleman from Anchorage named Ken Jacobus, and Fran Ulmer, who was the Minority Leader of the House at the time, and I think there was maybe one other person, to sit on a committee to advise the Legislature what they should do about this proposal to amend the Constitution by the initiative. And we spent - this committee spent a lot of time considering that and we came up with a recommendation. I'm not suggesting that you take up that subject again, but I do think that you might be interested in the recommendation that we made, and that is that if there is a proposition like this, seriously to amend the constitution, that it should never be acted upon by the first session of the Legislature. It should be referred to a, if you will, an ad hoc committee, or maybe a standing committee if you want, to consider in the interim, between the two sessions. Take it to the public, study it, scrutinize it in depth. Don't act upon it until the second session of the Legislature. If you have inclination to move this forward, and I hope you don't, I would suggest that you consider that

kind of an approach in order that it get truly in-depth consideration and treatment before you willy-nilly go into restructuring what I think has been a pretty successful state government.

I've talked too long, but I hope, maybe, I might have given some insight that might not ordinarily appear to the people that, I think, are making a shallow motion, here, as it were - - haven't really looked into what the history has been. Can you imagine the uproar that would occur if it were proposed on the national level - to elect the attorney general of the United States - to the President - an attorney that was not loyal to his program? There's no more reason to elect our attorney general than there is to elect the Attorney General of the United States. When Hamilton wrote what I quoted to you, and I think it's well worth your time to read The Federalist paper #70, if you really want to understand the concepts that went into this. The sound foundation for our executive branch was laid. We should not abandon it. Thank you.

SENATOR TAYLOR: Thank you Judge Stewart, I appreciate you being here. I know, because you and I have discussed this many times in the past, your comments and thoughts have always been, and are mine, on this subject, and I know you were disappointed to see my name there as a co-sponsor. And I share the reverence that you have for the framework of our government and the work that our forefathers put into it, and you specifically put into it. However, Judge Stewart, in my wildest dreams, I never would have conceived of electing a governor, who by slight of hand, would prevent a Legislature from exercising its power of confirmation. That's another significant power that we have over the Governor's selection of an attorney general, and that did occur. And then to watch, and have that Attorney General appear before both joint

house and senate committees, and individual committees, and admit that cases significant to the organic base of this State, the very Constitution that protects him, and the Attorney General, and to admit that those cases were dismissed, or claims not brought solely for political purposes, so motivated me that I introduced legislation over the last two years to create what I called a Constitutional Defense Council - a group of people, that when and if the Governor and his Attorney General abandon our State Constitution, that they could step in and act to protect that document. I figure that was kind of a halfway ground, at least, that might pick up, what I would hope would be rare instances. And I submit to you that this measure will do the damage that you are suggesting. I don't doubt that, but our constitutional framework in this State, in my opinion, all of that hard work that was done, and all of its predecessors, were based upon an assumption that the people who occupied that position would have integrity toward the office and the Constitution they were sworn to protect. You made reference to a statement that an Attorney General, finding himself in a compromising position between the Constitution and his Governor, should resign. And I submit to you that's correct. People of integrity would resign rather than dismiss cases for political purposes. Instead, I find today our Constitution is being used as a shield and a mirror in what appears to be a tragic game of smoke and mirrors where the Governor hides behind the AG and the AG hides behind the law. As a former attorney general told me, specifically, he said the current Attorney General loves his job more than he loves the Constitution and that frightens me greatly. I remember arguing these points with Dick Randolph, who almost 20 years ago, was trumpeting around the State with basically the same concept and I was going out front and carrying some of the same arguments that you've carried so beautifully before the committee today. But for those actions, I would never even

have contemplated this desperate step because I consider it a very desperate step. And yet, to suggest that this Governor and this Attorney General will somehow be held accountable - I don't know how much more of our constitutional framework we can afford to have sold down the drain in one federal court case after another or how much of it will even be retrievable by the next Administration. How many of these decisions will become precedent against our State as we attempt to exercise the very same framework of concepts that we had. There was testimony given by this Governor before bodies of Congress in just the last year where he pledged that he would not bring any suit against Congress should they destroy the 90/10 split - one of the most organic concepts that this State was based upon in its relationship with the federal government. How long could you allow that forfeiting of that exercise of this State's rights to go on before latch is attached, before precedent is developed to the extent where no future governor could ever go back and revisit that and attempt to protect the future heritage of the State? I don't know - I don't know the answers to those questions. I consider this desperate action. I really do, and I keep in mind your comments and I really thank you so much for taking the time you have today to bring those words to us because I don't do this, or don't suggest this form of legislation lightly, but I am fearful of where we will be without it should we ever elect similar people to office.

JUDGE STEWART: I can't argue with you about the particular cases. I'm not familiar with them. I'm surprised if there weren't some judicial remedy, if indeed the Attorney General, or the Governor, is violating those constitutional concepts.

SENATOR TAYLOR: I think there is, but I think the only judicial remedy that is left at this point is also a desperate act, and that would be impeachment.

JUDGE STEWART: And then I would say if you were to do this, this carries on...

SENATOR TAYLOR: much longer than an impeachment would - I appreciate it.

JUDGE STEWART: I'd be glad to answer any questions if ...

SENATOR TAYLOR: Are there any questions? Yes, Senator Parnell...

SENATOR PARNELL: I think I just would join you and speak for the committee in saying that you have provided some of the most thoughtful and most clear testimony of anybody I've ever heard in these committee rooms and I just want to say thank you and we appreciate hearing you.

JUDGE STEWART: I appreciate your consideration.

Grants Pass, Oregon  
February 19, 1983

TO MY FRIENDS IN THE ALASKA LEGISLATURE:

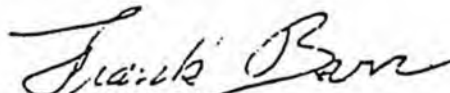
Almost thirty years ago I proposed that the state of Alaska elect its attorney general. Although my proposal was finally rejected by the Constitutional Convention in 1956, I have never abandoned my conviction that the attorney general should be "the people's attorney," elected by and responsible to the citizens of Alaska.

For that reason, I am pleased to support House Joint Resolution 7, which proposes an amendment to the state constitution providing for the election of the attorney general. HJR 7, if approved by both houses, would allow the electorate to determine the nature of the state's highest law enforcement officer.

I urge every legislator to fully consider this important bill. If you decide that your constituents deserve a truly impartial attorney general who is ultimately responsible to the people, then I encourage you to support the passage of HJR 7.

Thank you for your attention.

Respectfully,



FRANK BARR  
Delegate, Alaska Constitutional  
Convention (1955-56)

2282

Subject: Attorney General

counter to the experience of most states in deliberately doing that. That is, I don't think the adjutant general should be any different from the head of a department, as he would be in the state, and I think that he should be ratified, and I believe that Mr. Hellenthal's objection largely is to an expression such as "flag officers". If that is an objection, it can be cleared up by generic words in Style and Drafting. I oppose the amendment as being contrary to what we have done here in the past as to other officers.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Hellenthal be adopted by the Convention?" All in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 10 or Section 11? If not, are there amendments to Section 12? Section 13? Section 14? Section 15? Section 16? Mr. Metcalf.

METCALF: May I ask Mr. Rivers a question?

PRESIDENT EGAN: You may, Mr. Metcalf.

METCALF: Mr. Victor Rivers, you say the head of each principal department, does that include the attorney general?

V. RIVERS: By specific mention of the will of this body the attorney general is not included in this section.

METCALF: Does he have to be confirmed by the senate at all, or the legislature?

V. RIVERS: Insofar as he would fall under the head of one of the principal departments, I assume he would.

METCALF: You assume he would be one of the heads of the principal departments?

V. RIVERS: It is merely an assumption.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: The attorney general question worries me very much, and I would like to submit a small amendment. It is three words, that is all.

PRESIDENT EGAN: Would you submit it please, Mr. Metcalf.

CHIEF CLERK: "Section 16, page 7, line 14, immediately following the word 'Department', insert the phrase 'including the attorney general'."

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

METCALF: I move that it be adopted and ask unanimous consent.

BUCKALEW: Objection.

DOOGAN: Point of order.

PRESIDENT EGAN: Objection is heard. Your point of order, Mr. Doogan.

KNIGHT: I second the motion.

DOOGAN: My point of order is that we have already considered this matter once, and I take exception to the remarks by the Chairman of the Legislative Committee in that this body by their action implied that the attorney general would not be one of those principal departments. I take exception for this reason: that is, as it was so aptly pointed out by Mr. Davis, the thing they did not want to do was to set up the attorney general's office in the constitution but it could be set up as one of the principal departments.

PRESIDENT EGAN: As to the point of order raised by Mr. Doogan, we did consider spelling out that there be an attorney general once before in this section, did we not? Mr. Ralph Rivers.

R. RIVERS: I was about to offer an amendment so I got talked out of it, so it is the first time it has come up.

PRESIDENT EGAN: If this is the first time, the point of order would not be well taken at this time. Mr. Taylor.

TAYLOR: I was going to raise the same point of order as Mr. Doogan, but I think I am going to go even further because there was a specific amendment offered to provide for the establishment of an elected attorney general.

PRESIDENT EGAN: This does not say though, Mr. Taylor, that he would have to be an elected attorney general.

TAYLOR: Mr. Barr's motion to adopt an amendment to that effect would be.

PRESIDENT EGAN: But Mr. Metcalf's amendment does not include anything of that nature, so the amendment would be in order at this time, Mr. Taylor. Is there discussion of the proposed amendment as offered by Mr. Metcalf? Mr. Metcalf.

METCALF: I feel that mention of the attorney general's office should be made because we have mentioned it in the proposal under direct legislation, and in initiative and referendum, I think we mentioned it once or twice there. I am confused as to whether the senate is to ratify the nomination once every two years or once every four years. I am in a state of confusion

and I would like to have this spelled out a little more as far as this important office is concerned. That's my feeling on the matter.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: May I speak on this matter now. I don't believe that it is necessary to put an attorney general in there. If you do that you might as well put all the branches you are going to have, all the principal branches of the executive department in because it naturally falls into the category of one of the principal branches of the legislature, and I think we considered that the other day. It was felt that it was a legal department of the executive branch and should not be necessarily named because the governor would have the right under our present article to appoint the attorney general who sets up the legal department of the executive department, and I can't see whether if you add that attorney general on there including the attorney general, you had better put it including the highway department and all other things. I think we should leave it the way it is, and the other things will naturally follow and fall into the proper category.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Metcalf 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. Are there other amendments to Section 16? If not, are there amendments to Section 17? Amendments to Section 18? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment.

PRESIDENT EGAN: The Chief Clerk may read the proposed amendment as offered by Mr. Sundborg.

CHIEF CLERK: "Strike Section 18 and substitute the following: 'Section 18. The Governor may make ad interim appointments to fill vacancies occurring during a recess of the legislature in offices requiring confirmation of either or both houses of the legislature. The duration of such appointments shall be prescribed by law.'"

SUNDBORG: Mr. President, I move the adoption of the amendment.

R. RIVERS: I second the motion.

PRESIDENT EGAN: Mr. Sundborg moves the adoption of the proposed amendment, Mr. Rivers seconds the motion. The motion is open for discussion. Mr. Sundborg.

SUNDBORG: Mr. President, a little while ago I submitted another

Subject: Election of AG.

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

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

PRESIDENT EGAN: Between Section 13 and Section 14?

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

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

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

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

BARR: I move the adoption of this amendment.

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

KNIGHT: I'll second the motion.

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

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

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

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

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

PRESIDENT EGAN: Any further discussion? Mr. Marston.

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

PRESIDENT EGAN: Mr. Hellenenthal.

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

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

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

PRESIDENT EGAN: Mr. McLaughlin.

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

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

PRESIDENT EGAN: Mr. Barr.

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

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

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

PRESIDENT EGAN: You may, Mr. Stewart.

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

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

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

McLAUGHLIN: That's right.

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

PRESIDENT EGAN: Mr. Ralph Rivers.

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

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

PRESIDENT EGAN: Mr. Robertson.

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

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

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

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

PRESIDENT EGAN: Mr. Hellenenthal.

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

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

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

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

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

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

Absent: 3 - Coghill, VanderLeest, Wien.)

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

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

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

McCUTCHEON: Point of order, Mr. President.

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

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

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

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

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

Subject: Attorney General

on a matter that is far removed from Convention business.

PRESIDENT EGAN: Mrs. Hermann, if there is no objection.

(Mrs. Hermann spoke on a matter of privilege.)

PRESIDENT EGAN: Thank you, Mrs. Hermann. Did we have two reconsiderations of amendments that had been adopted, pending or was there one? The Chair only brings it up at this time inasmuch as it might be best if we consider any reconsiderations on this proposal as quickly as we can. That is, it would be up to the maker of the motion actually, but were there two reconsiderations or one?

CHIEF CLERK: One, I think.

PRESIDENT EGAN: If the Chair remembers it, Mr. Kilcher I think reconsidered on the last proposed amendment, but I had the feeling there had been another notice given during the day. If not, we will continue. Mr. Victor Rivers.

V. RIVERS: I have an amendment.

PRESIDENT EGAN: You have an amendment by the Committee?

V. RIVERS: By a minority group of the Committee, myself and Mr. Harris.

PRESIDENT EGAN: Mr. Victor Rivers, you may present your proposed amendment. The Chief Clerk may present the proposed amendment.

CHIEF CLERK: "After Section 14, page 7 of Committee Proposal No. 10/a, insert a new section as follows: 'Section 15.

The Attorney General shall be appointed by the Governor from two or more qualified persons nominated in the same manner as judges by the judicial council. He shall have been admitted to practice law in the State and shall have the other qualifications prescribed herein for heads of principal departments and shall be subject to approval by the Legislature in a similar manner.

The Attorney General may be removed by the Governor with the consent and approval of both houses of the Legislature meeting jointly.' Renumber successive sections to conform to the above insertion."

V. RIVERS: I move the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the amendment. Are there copies available for the delegates? Is there a second to Mr. Rivers' motion?

HARRIS: I second the motion.

PRESIDENT EGAN: Mr. Harris seconds the motion. The matter is open for discussion. Mr. Victor Rivers.

V. RIVERS: Mr. President, this matter of the office of attorney general came up for a good deal of discussion in connection with the strong executive and in connection with the matter of having some screening for the man who would be the attorney general. Some of the Committee felt that it would interfere with the strength of the executive. Others of the Committee felt they wanted to see the attorney general elective and not removable by the governor. It seemed that the only thing that was of main concern to a great many of us was that while we recognize the value of the strong executive, we are not naive enough to think that the governor who is elected will not have certain obligations, commitments, endorsements to meet when he goes into office. We realize that on all the other department heads there may have to be on his part some compromise with his desires under this plan as we have it. We did, however, want to try to eliminate any matter of the return favors or endorsements or obligations to the man who he appointed as attorney general. We are trying to remove that particular office by a screening process we have set up here, so the man who went in there, his appointment would be based on merit and not on any other consideration. As you will note, we have recommended that the attorney general be screened by the Legislative Council in regard to his qualifications, that two or more be screened in accordance with the requirements to fill the job satisfactorily both on the basis of qualifications and on the basis of the governor's desires. The only intent in this is that the attorney general shall be one who is appointed not from the point of view of any obligations from the governor to him, and also the other intent is that the attorney general cannot be removed by the governor without also the approval of the legislature meeting jointly as they approved the appointment of the attorney general at the time he was actually put into office. He would be removed in the same manner, and by that manner only. There has been a good deal said here about diluting the power of the strong executive. I am of the opinion that perhaps a governor going into office where he had to make a large number of appointments, where he had been supported in his campaigns by many individuals who might be men of high degree of competence or average competence, I would be of an opinion that a governor in that position would probably welcome the possibility of the chance of appointing one office in such a manner that he would not have to repay any obligations or indebtedness or favors in that particular appointment. I for one feel the attorney general's office should have removed from it the need for making any concession to competence or qualifications because of political support on the part of the applicant to the governor in seeking election. That is my opinion and I feel there is sound justification for that opinion. I realize there are many divergent opinions here on that subject.

PRESIDENT EGAN: Is there further discussion? Mr. Buckalew.

BUCKALEW: Mr. President, from the beginning I would like to state that I don't like this proposal. The first objection I see is that we are shoving off on the judicial council a function that is not one of their duties. The judicial council was created by Mr. McLaughlin's department. He set up a judiciary. Now we are going to let Mr. McLaughlin's department select an attorney general. Not only does the attorney general have to be approved by the judicial council, the attorney general then has to be approved by the legislature. If the governor wants to remove him he has to get the consent of the legislature. Now, I don't think this matter would even have come up if we had not discovered that the initiative and referendum article referred to the attorney general. The reason I bring that up is that I think Mr. Sundborg had an excellent suggestion that we just insert the words "secretary of state". That is probably one of his functions. That is the only reason I think this business came up. We decided yesterday that we were not going to elect the attorney general. The argument put up by the Committee was they wanted to have a strong executive and today they are going to water it down a little. I think we ought to be consistent and vote this amendment down.

V. RIVERS: I rise to a point of order. I stated this matter had been discussed some time ago in Committee. It did not arise yesterday. This amendment was prepared during the time of that discussion. I also object to referring to any department of this constitution as being the department of some one individual. I don't believe it is either Mr. McLaughlin's or mine or anybody else's; it is the constitution of all the people of Alaska.

PRESIDENT EGAN: Mr. Harris.

HARRIS: I was going to correct Mr. Buckalew, but since Mr. Rivers has already done so, I will only state that I would favor this amendment. We talked about this quite a bit in Committee, and it is a check on the governor. It makes a bit of difference when the attorney general's word becomes law. It actually is law, unless it is disputed in court and found to be not exactly as it is supposed to be, then it is used as law. Therefore, we feel the attorney general should be a qualified man and in order to insure that his qualifications are up to par we needed some type of screening process. Now, we did not screen the man because we wanted to connect him with the judicial department as Mr. Buckalew suggests. The only reason for using the judicial council we feel is that the judicial council is qualified to screen the attorney general. Therefore, that was the reason for bringing up this amendment.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: I agree with Mr. Victor Rivers that the judicial

council is not the idea that it was limited to one person; it was the product of the Judiciary Committee's combined thought. I am personally opposed to such a method of selection. Within my knowledge there is only one equivalent method of selection of the attorney general, and that is probably in New Hampshire where the attorney general is selected by the justices of the supreme court. I believe that Mr. Buckalew is right in that he says that the attorney general is not otherwise mentioned in the constitution except in the initiative and referendum, and if you can recall, the only reason he was mentioned in the article on the initiative and referendum was originally they had a proposal as it came out of committee, my recollection is, that the 10 qualified voters could submit a proposition to the attorney general, and secure his opinion as to its legality. That is why the attorney general was mentioned. We chopped the portion requiring an opinion of legality from the attorney general, we chopped the portion, if I recall, requiring review of his opinion, and in substance what we did is we made it a function as it stands now, the true function of the secretary of state. The attorney general is in there by happenstance and no other reason. Yesterday we determined that the attorney general should not be elected and implicitly what we determined was it should be within the discretion of the governor subject possibly to confirmation that the governor alone in his discretion would select the attorney general and would be responsible for him. The attorney general, apparently, under the concept that we have implicitly accepted, is an attorney largely for the executive department. In any event, he is a political appointee, he is an executive appointee. I don't believe that we should be putting him through a means test and running him in substance through the judicial council. Under such circumstances, the governor may well say when the attorney general proves unsatisfactory to the electorate at large, the governor should have the direct responsibility, he should not be able to evade it by saying, "It was not my selection." I am opposed to it. The judicial council was designed in the constitution deliberately for one reason. That was for the selection of the justices of the superior and supreme courts, when in substance we are now utilizing them to provide a rather cathartic attorney general. I think that this is a mere compromise, it is not a majority opinion of the Committee on the executive and certainly it has not been considered by the Judiciary Committee. I cannot speak for them, but I feel sure that the majority would feel the same way. Our choice is not a compromise. He is either elected or he is appointed. If he is appointive and if he is going to be one of the consorts of the governor and one of his confidants, he should be selected directly by the governor and the governor should be responsible. If we accept this, then in premise we should accept a screening of every other public official appointed by the governor in his cabinet. I believe the attorney general, if he has to be mentioned, and I don't think it necessary, I don't think he should be embodied in the constitution. The attorney general should be like the attorney general of the

United States, appointed by the executive and the executive is responsible for him. This is, frankly, I think on its face, a compromise measure and I believe the attorney general is without our sphere, and in substance should not even be mentioned in the constitution, let alone nominated by the judicial council.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: May I ask a question of Mr. McLaughlin? Would we gather from your statements that the judicial council is limited only in its purpose to the selection or the recommendation of judges?

MCLAUGHLIN: That is not so, Mr. Rivers, because we have a specific provision in there saying that they shall perform such other duties as are provided by law. I am sure it was the intent of the Convention that their functions would be limited to the judicial. In fact, I think by error you did remark that the attorney general was selected by the Legislative Council when you supported this matter, but I would oppose it just as I would oppose the judicial council selecting the sites of the court houses. I think they are participating now in the executive functions of government and I believe the judicial council should be limited as it has been historically to judicial affairs and not to executive affairs.

V. RIVERS: Do you agree with the judicial council in the matter of screening this man as to qualifications, would be doing the same thing as if he were screening a judge? Isn't it for qualifications and to remove the judge from direct political election or appointment that we put up the judicial council? Isn't the process of screening identical in the two cases?

MCLAUGHLIN: Yes, the process of screening is identical except for this one thing. A judge is supposed to be dispassionate. He is not supposed to be acceptable to the people who appear before him. In the case of the attorney general the attorney general will have a client-attorney relationship to the governor and frankly I believe the governor should have wider choice and discretion. It is like selecting the presidential physician by vote of a selection board. The relationship is something that is intimate, and there is an intimacy of relationship that does not exist between the judiciary and the general public. We are selecting an attorney for the governor and saying, that's it, without regard to personality or anything of the sort.

V. RIVERS: I would like to ask another question, and that is, do you think the attorney general should also be removable at will by the governor at any time after he has been appointed and confirmed?

MCLAUGHLIN: I think that is so, yes.

V. RIVERS: Do you think the attorney general represents the people of the Territory in the matter of his interpretations of law, or does he represent the administration? I realize the interests at most times are coincidental and the same, but at times when there is any divergence would you also say he represents the people?

MCLAUGHLIN: Frankly, I think the attorney general represents the executive department of the government.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I cannot follow the reasoning either of Mr. McLaughlin or Mr. Buckalew. I think the screening set up in this proposed amendment to Article 10/a is I think a happy choice. It may be a compromise, but I think it is a very fine compromise, in between the two propositions that have been advanced in choosing the attorney general. I believe the judicial council is the proper body to, what you call, screen the attorney general. The duties if given to the judicial council will be the same as they are in regard to the justices of the supreme court and the judges of the superior court. It is to select a competent lawyer to fill the office of attorney general just as they are duty bound to select the best men they can for judicial office. The office of attorney general is a very important office. There has been numerous times in the history of the Territory of Alaska when we have had an extremely weak attorney general and the Territory has suffered by it. If we have a capable attorney general I think we will be a great deal better off if the attorney general is vigorous and follows out the instructions of the governor in fulfilling his office. I feel the attorney general is only, his duties should primarily be the attorney for the executive branch of the state government. In the past there has been times that the attorney general has had to be the legal officer for the executive, Legislative Council, and the counsel for all departments of the Territory. That was extremely a difficult position. I know Mr. Rivers had it for a number of years and he can explain, perhaps better than I can, the difficulties of filling of positions such as that, but I believe primarily the attorney general is the attorney for the governor and the department heads, the departments established by this constitution and who would be under the direct supervision of the governor. I feel that some provision maybe should be made here or the legislature should make one for the employment of a legislative counsel during the sessions of the legislature, and so the attorney general would not have to take a part in that particular matter. I feel that the adoption of this amendment with the governor being given the right to remove the attorney general without the consent of the legislature would be a happy choice.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it seems to me from the arguments

we have heard that probably we are going at this backwards. The arguments have been as to how we should select an attorney general. Now it is my thought on the basis of the bill that we have here that probably what we want to decide is whether we want a constitutional attorney general or not. It seems to me on the executive department, as we have outlined it here so far, that we probably don't want a constitutional attorney general at all; that that matter should be left to the legislature as to whether we do or don't and to what his powers are when the legislature decides to set up an attorney general, and accordingly it seems to me pointless to discuss as to how the attorney general is to be selected. If it is wise in the view of the legislature when they set up an attorney general that he should be screened by the judicial council, these arguments could be made at that time, but at the minute we have not mentioned an attorney general, and it seems to me that the executive department is going to be a whole lot more what the Committee had in mind if we don't set up an attorney general as such in this article. Now I realize that if we don't set up an attorney general we are going to have to do something to the initiative, but that is a different problem and no problem from my standpoint.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: It has been said that perhaps we could omit mentioning an attorney general in this article and that the secretary of state could take over the function of the attorney general with regard to the initiative and referendum. In the initiative and referendum article we said that the initiative should consist of a petition with a proposed bill that the sponsors wished to have made into law and that the attorney general would scrutinize it as to sufficiency for form and the attorney general would condense the matter for appropriate petition heading so that the people that sign it would have an adequate draft as to what they are signing. Afterwards the attorney general shall prepare the ballot title, assuming that enough signatures were obtained and that this bill were to go before the voters. It is a little difficult I think for the secretary of state to engage in all of those legalities, and I think as far as the initiative and referendum is concerned, we ought to have that in the hands of the attorney general just as the initiative and referendum article suggests. However, I see difficulties with this proposed amendment. The judges are banned from politics. They are picked on an absolutely nonpartisan basis. The attorney general presumably should be a member of the same party as the governor. The attorney general, if he is a member of the same party, as attorney general, would take the normal part in politics, but if he is picked on a nonpartisan basis as the judges are, then we have to ban him from engaging in politics and he also could turn out to be somebody of the opposite party. So I believe we are getting crossed up if we try to put the attorney general through legislative council. I think we are getting -- the judicial

council I mean -- I think we are getting the judicial council into some little difficulties, etc., and from the political standpoint we want to keep them out of it. They can't hold any position or be active on the political scene. So if this particular amendment does not pan out, I am going to propose one as follows: The department heads appointed by the governor shall include an attorney general. Then we can leave the initiative and referendum functions right where they are.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, as it has been mentioned, this is a minority report from the Committee, and I think it is only right you hear from some of the rest of the Committee regarding this. We in our Committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his co-workers down through the various offices so that when the state's functions would be successful we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election. Mention has been made not only here on the floor but also the same argument in the Committee that the governor would have certain obligations and would be expected to lean toward that obligation in the appointing of an attorney general, but I can't help but feel that that same trend of thought would run right down through the other departments, and I believe that there are other departments under the governor that are of equal importance and if the governor is going to bow to party obligations or other obligations in selecting of the attorney general, he will do the same thing all the way through his other department heads, and we won't have a man in there that we can be fully proud of, and I think we are going to want to elect a governor who will be able to stand on his own two feet and appoint the men that he feels should be in the office. I think if he is that type of man he will not only be respected by one party but by all of the people of the state. As far as the removal is concerned, if we worry that the governor may remove the man at will, if that is not best, we can always insert that he be removed with the consent of the legislature, that is another matter, but as far as the appointing is concerned, I think that is vital right now. As far as screening is concerned, I can see that it might have been good in the past to have the nominations for attorney general screened some way before they even face election by the people. Be that as it may, I think if we elect a governor it is his duty to screen and select a good attorney general. That is part of his job. We are electing him to do that very thing, and if he fails to select a good attorney general then he is that much more a failure as a governor, and he will stand that test in the coming election. If we feel that the attorney general must be screened so that we have the best possible attorney general, I think it is also

necessary that the head of the department of education, head of the department of welfare, health and labor, and all the other department heads be screened by somebody so that this governor gets the right men in his cabinet, so to speak. I certainly feel that he should be able to screen and select a good attorney general as well as select the other department heads. But I think there is one thing that is even more important and we discussed that in the Committee, and that is the matter of compatibility. We have felt in the past that we have not had attorney generals who have been entirely in sympathy with the governor and it has been due to the way the two have gotten to their office. We elect the one and the other is appointed out of Washington, and we have seen certain cases where they have not worked out in harmony. Now, if the attorney general is to represent the people alone, then of course he should be elected, but as he is to work under the executive department we want a man who is compatible with the governor and with his type of program that he wants to put over in the state, one that understands the governor, one that will work with the governor and ask the judicial council as set up, not to honor party politics but to work in a nonpartisan capacity. Yet I feel they will not be able to do that as far as the attorney general is concerned, and I don't believe there is any more reason to feel that a judicial council nominee would be any more compatible than one elected by the people of the state; if they are going to ask the governor, "Will this man work with you or will that man work with you, do you want this one or that one?" You might as well say, "Let the governor pick the man in the first place." If they are going to have the liberty to put up a man that will not work with a governor, then we spoil our whole plan for an effective administration. I believe, as Mr. Ralph Rivers mentioned, if we want the attorney general's office mentioned at all in the constitution, it would be very simple on Section 16, line 14, after "department" to insert the words "including the attorney general's office." That would make it very clear that the governor would have the appointive powers and that the attorney general's office would be one that he would have direct control over. That gives you, I believe, some of the Committee thinking regarding the attorney general being appointed by the governor.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: I would like to ask Mr. Rivers a question, if I may. Mr. Ralph Rivers, are the services of the attorney general available to the secretary of state in case he needs them?

R. RIVERS: Yes.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I would like to ask Delegate Rivers a question through the Chair, if I may.

PRESIDENT EGAN: You may ask your question, Mr. Buckalew, if there is no objection.

BUCKALEW: Mr. Rivers, I notice that the proposal, that the caption is by Delegate Rivers. My question was whether this was a committee proposal or your separate individual proposal?

PRESIDENT EGAN: Mr. Rivers has already answered that question, Mr. Buckalew. He said that it was actually a proposal of his and of Mr. Harris. Mr. Victor Rivers.

V. RIVERS: In closing this discussion, I will make it brief. I just want to say, in my opinion it is no compromise opinion. If it had been a compromise we would not have this discussion on the floor. It has been pointed to as a compromise. Those of us who submitted this proposal honestly and actually think the attorney general should be screened. Now I wanted to clear up a point that Mr. McLaughlin made. He pointed out that certain appointive methods were used in the State of New Hampshire. They are. The attorney general is appointed by the governor and a council of five. In the State of Tennessee the attorney general is appointed for a period of eight years by the justices of the supreme court. In four states, as I am able to count, the attorney general is appointed by the governor by and with the consent of the legislature. In three states the attorney general is appointed by the governor and in the balance he is elected by the people. So if you add that up you will find about 38 states in which he is elected; in these two states I have mentioned, Tennessee and New Hampshire, he is appointed under a similar plan, and in the balance of the states he is appointed by the governor with or without the approval of the legislature, as the case may be. It is my thought, and I have observed this rather closely from some contact with the legislature, that while the attorney general is in essence not a judge, he does interpret the law which governs people until somebody challenges his interpretation, and then his decisions oftentimes and most of the time do have the force of law until they are upset or turned over or otherwise disturbed by having somebody appeal to the courts. It does not seem to me to be a bit out of line that the attorney general should be properly screened as to competence, and in the selection of the attorney general the governor should be relieved of the obligation to repay any favors or to make any particular discrimination in favor of any individual. It has been stated here that we tie the hands of the strong executive. Read this amendment over again. It does not say who the governor shall appoint. It says, "Two or more shall be screened by the judicial council and submitted to the governor for his appointment." He is not limited to the one man or two men or three men. If he can't make his choice he might even have four men, but he does have any obligation removed in making that appointment to any individual. It would be entirely free of a political aspect insofar as it affected the attorney general's competence. There is nothing in here that is counter to common practice, I refer

to the State of New Hampshire, the State of Tennessee, and others, but it costs you money if you go to court to upset an attorney general or any other similar official's opinion. That opinion as I have seen it many times, that opinion has the force of law and interpretation of any laws the legislature may have passed. While you might not view him as a judge, in essence he is a judge of what that law says until it's determined otherwise by the courts. In essence he is a judge of what certain things do that apply to the people. For that reason I think that he should be screened as to competence. I see nothing in that which weakens the strong executive. The governor might say of the first two appointees named, "I am unable to make a choice; submit me another name." There is nothing that stops him from doing that in the proceedings of the council. It seems to me that some determination which would relieve this office of having to be filled by any repayment of political favor or obligation should be set up, and that is why we have introduced this amendment. It is no compromise.

PRESIDENT EGAN: Mr. Victor Rivers had stated he was closing. No one objected. Unless there is someone who has not spoken -- Mr. McLaughlin.

MCLAUGHLIN: I wanted to ask Mr. Rivers a question. Mr. Rivers, when you say the council in New Hampshire, you mean that five elected executive council who are elected by the people together with the governor?

V. RIVERS: I stated the council of five. The council of five is elected for two-year terms along with the governor and they determine with the governor the appointment of the attorney general.

MCLAUGHLIN: But that is not a judicial council at all, is it?

V. RIVERS: I don't know what their duties are. They are a council of five, but whether they are constituted as ours is, I do not know.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers and Mr. Harris be adopted by the Convention?"

HARRIS: I request a roll call.

PRESIDENT EGAN: Mr. Harris asks that we have a roll call. The Chief Clerk will call the roll on the question.

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

Yeas: 18 - Barr, Collins, Cross, H. Fischer, Harris, Hinckel, Kilcher, Metcalf, Nerland, Nolan, Peratovich, Reader, V. Rivers, Robertson,

Rosswog, Smith, Taylor, VanderLeest.

Nays: 36 - Armstrong, Awes, Boswell, Buckalew, Coghill, Cooper, Davis, Doogan, Emberg, V. Fischer, Gray, Hellenthal, Hermann, Hilscher, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nordale, Poulsen, Riley, R. Rivers, Stewart, Sundborg, Sweeney, Walsh, White, Wien, Mr. President.

Absent: 1 - McNealy.)

CHIEF CLERK: 18 yeas, 36 nays, and 1 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 14? Mr. Ralph Rivers.

R. RIVERS: I have an amendment.

PRESIDENT EGAN: Mr. Ralph Rivers, you may offer your amendment. The Chief Clerk may read the proposed amendment.

R. RIVERS: May we have about a two-minute recess? I would like to consult with Mr. Londborg.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for two minutes.

#### RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk will please read the amendment as proposed by Mr. Ralph Rivers.

R. RIVERS: It hasn't been introduced yet, I was going to withdraw it.

PRESIDENT EGAN: No, it has not been introduced.

R. RIVERS: I won't even do that.

PRESIDENT EGAN: Are there amendments to Section 13 or 14 or 15? Mr. Sundborg.

SUNDBORG: Mr. President, I have a question about Section 14. May I be permitted to address it to Mr. Rivers?

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

SUNDBORG: Mr. Rivers, I am a little bit bothered about these

FISCAL NOTE

STATE OF ALASKA  
1997 LEGISLATIVE SESSION

BILL NO. HJR 19

ANALYSIS CONTINUATION:

position, at an estimated cost of \$217,000 per year to perform these functions (using FY 98 salaries for illustration purposes).

As discussed in the narrative above, outside counsel costs for the University can vary widely and actual transfer of these legal service responsibilities to the Attorney General would require a more detailed analysis to identify specific costs and/or savings from the transfer. The following summarizes the potential fiscal impact to the Department of Law that we can identify at this time using the department's 1997 standard attorney cost schedule for a full-time equivalent attorney position, including standard overheads (clerical support, communications, space, supplies, data processing, etc.), and 1997 salaries and costs for non-cost schedule positions.

ARRC Legal Services Transfer (beginning mid-FY99)	
3 FTE Attorneys @ \$127.0	\$381.0
Direct case costs @ \$5.0 per attorney	\$15.0
1.5 PFT Legal Secretary position authorizations	\$0.0
One-time equipment purchases for new positions @ \$6.5	\$32.5
Contract outside counsel/experts @ estimated \$200.0	\$200.0
	<u>\$628.5</u>
University of Alaska Legal Services Transfer (beginning mid-FY99)	
4 FTE Attorneys @ \$127.0	\$508.0
Direct case costs @ \$5.0 per attorney	\$20.0
2 PFT Legal Secretary position authorizations	\$0.0
One-time equipment purchases for new positions @ \$6.5	\$39.0
Contract outside counsel/experts @ estimated \$500.0 to \$1,500.0	\$500.0
	<u>\$1,067.0</u>
Administration & Support Personnel Classification System (beginning mid-FY03)	
2 Personnel Assistant I @ \$49.6	\$99.1
1 Administrative Clerk III @ \$45.5	\$45.5
One-time equipment purchases for new positions @ \$6.5	\$19.5
	<u>\$164.2</u>
Total, Including One Time Equipment Purchases	
	\$1,859.7
Less One-time items	(\$91.0)
Department of Law Estimated Minimum Annual Cost	<u><u>\$1,768.7</u></u>



# FISCAL NOTE

**STATE OF ALASKA**  
**1997 LEGISLATIVE SESSION**

**BILL NO. HJR 19**

Revision Date: \_\_\_\_\_ Dept. Affected: Office of the Governor  
 Title: "Proposing Amendments to the Constitution ... BRU: Executive Operations  
relating to the election and duties of the attorney general." Component: Executive Office  
 Sponsor: Representatives Green, Barnes  
 Requester: House Judiciary COMPONENT SERIAL NO. 6

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>*****</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						*****
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>*****</b>

Estimate of any current year (FY97) cost: \$ 0.0

**POSITIONS**

FULL-TIME						3
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This analysis emulates the organizational structure of the states of Washington, Oregon and Arizona. Each of these states has an elected attorney general, and each Governor has on-staff counsel to respond to general legal questions, public policy issues, internal matters, open meeting laws, ethics laws, revocation of appointments, handle extraditions and petitions, prepare administrative orders, deeds relating to the state's natural resources, etc., and to carry-out the constitutional requirements of the Governor (i.e., executive clemency, messages to the Legislature, executive orders)

The constitutional amendment proposed by this resolution would be on the ballot in 1998. If approved by the voters, the first election of an attorney general would be with the next gubernatorial election in November, 2002. Fiscal impact to Office of the Governor would begin in FY03. The fiscal analysis is attached.

Prepared by: Michael A. Nizich, Administrative Director *M. Nizich* Phone: 465-3876  
 Division: Administrative Services Date: 4/11/97  
 Approved by Commissioner: Jim Ayers, Chief of Staff *J. Ayers* Date: \_\_\_\_\_  
 Agency: Office of the Governor

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Table 1—Qualifications, Selection, and Term of Attorneys General

Jurisdiction	Qualifications			Selection and Term		
	Minimum age	Citizenship & State Residency	Bar Admission Required	Elected	Appt'd By, With Consent Of	Term* (yrs.)
Alabama	25	U.S., 5 yrs.	Yes	x		4
Alaska	—	U.S., 1 yr.	No		Gov., Legis.	— <sup>c</sup>
Am. Samoa	—	U.S.	No		Gov., Legis.	— <sup>c</sup>
Arizona	25	U.S. (10 yrs.). 5 yrs.	No	x		4
Arkansas	21	U.S., elector, <sup>b</sup> 1 yr.	No	x		4
California	—	U.S., state	5 yrs.	x		4
Colorado	25	U.S., 2 yrs.	Yes	x		4
Connecticut	—	Elector	10 yrs.	x		4
Delaware	—	—	No	x		4
District of Columbia	—	D.C.	No		Mayor, D.C.	—
Florida	30	U.S., elector, 7 yrs.	5 yrs.	x		4
Georgia	25	U.S. (10 yrs.), 4 yrs.	7 yrs.	x		4
Guam	—	—	No		Gov., Legis.	— <sup>c</sup>
Hawaii	—	U.S., 1 yr.	Implied		Gov., Sen.	— <sup>d</sup>
Idaho	30	U.S., 2 yrs.	Yes	x		4
Illinois	25	U.S., 3 yrs.	Yes	x		4
Indiana	21	State	Yes	x		4
Iowa	—	Elector	No	x		4
Kansas	—	—	Yes	x		4
Kentucky	30	U.S., 2 yrs.	8 yrs.	x		4
Louisiana	25	U.S., elector, 5 yrs.	5 yrs.	x		4
Maine	—	—	No	Legis.		2
Maryland	—	U.S., 10 yrs.	10 yrs.	x		4
Massachusetts	—	5 yrs.	Yes	x		4
Michigan	21	Elector, 6 months	No	x		4
Minnesota	21	U.S. (3 mos.), elector	Implied	x		4
Mississippi	—	U.S., elector	5 yrs.	x		4
Missouri	—	U.S., 1 yr.	No	x		4
Montana	25	U.S., 2 yrs.	5 yrs.	x		4
Nebraska	—	—	No	x		4
Nevada	25	Elector, 2 yrs.	No	x		4
New Hampshire	—	—	Yes		Gov., Exec. Council	4
New Jersey	—	State	Implied		Gov., Sen.	4
New Mexico	30	U.S., 5 yrs.	Yes	x		4
New York	30	U.S., 5 yrs.	Implied	x		4
North Carolina	21	Elector	Yes	x		4
North Dakota	25	Elector, state	Implied	x		4
N. Mariana Is.	—	—	5 yrs.		Gov., Sen.	—
Ohio	18	Elector	Implied	x		4
Oklahoma	31	U.S., elector, 10 yrs.	No	x		4
Oregon	18	Elector	No	x		4
Pennsylvania	30	State, 7 yrs.	Yes	x		4
Puerto Rico <sup>e</sup>	21	U.S.	Yes		Gov., Sen.	— <sup>c</sup>
Rhode Is.	21	Elector	Yes	x		2
South Carolina	—	U.S., elector	Implied	x		4
South Dakota	—	State	Yes	x		4
Tennessee	—	—	Implied		Supreme Ct.	8
Texas	—	—	No	x		4
Utah	25	U.S., elector	Yes	x		4
Vermont	21	U.S., elector	Implied	x		2
Virginia	30	U.S., state	5 yrs.	x		4
Virgin Is.	—	U.S.	Yes		Gov., Sen.	— <sup>d</sup>
Washington	21	Elector	Yes	x		4
West Virginia	25	U.S., 5 yrs.	Yes	x		4
Wisconsin	—	U.S., elector	Implied	x		4
Wyoming	21	Elector	4 yrs.		Gov.	— <sup>c</sup>

State Attorneys General

Qualifications, Selection, and Term

State Attorneys General

<sup>a</sup>Note that all jurisdictions except Kentucky and New Mexico allow the Attorney General to serve successive terms. Beginning in 1991 New Mexico will also allow the Attorney General to serve successive terms.

<sup>b</sup>For a definition of "elector," see the constitution of the specific state that has this requirement.

<sup>c</sup>The term may run for an indefinite number of years.

<sup>d</sup>The term runs concurrently with the state governor.

<sup>e</sup>There are no statutory requirements in Puerto Rico for the office of Attorney General. Historically, qualifications related to U.S. citizenship and admission to the bar are required.

# The Alaska Attorney General: Elected or Appointed?

by Norman C. Gorsuch

The office of state attorneys general can either strengthen or check the executive branch. The Alaska attorney general plays a significant role in public policy-making. Currently, Alaska's governor appoints the state attorney general, and until the argument about the range of executive power is settled, the controversy about the the office's election or appointment will persist.

## A History and Description of the Office of the Attorney General

The first office of the attorney general was created in 1461 when the King of England appointed a person to direct all of his representatives who appeared in the royal courts. The common law decisions of these courts defined the attorney general's duties, which, in essence, were to protect the royal property, prerogatives, and revenue, and to prosecute those persons accused of committing crimes. Examples of these duties included recovering for damages done to royal property, regulating public charities and trusts, repealing grants and patents, and prosecuting misdemeanor and felony crimes. By 1700, the attorney general was accorded membership in

Parliament to explain crown legislation. <sup>(1)</sup>

When the American Colonies were settled, colonial attorneys general were appointed by the royal governors and were deemed to exercise all of the common law powers inherent in the office of the attorney general of England. After the Revolutionary War, the new state courts decided that the common law powers exercised by the Attorney General of England and discussed above were an inherent part of the office of state attorney general. In addition, most states ratified this grant of powers in state constitutions or statutes. <sup>(2)</sup>

The method of selecting state attorneys general evolved in stages. Prior to Andrew Jackson's presidency, most states provided for the appointment of the attorney general by the governor or legislature. With the advent of Andrew Jackson's presidency, the concept of sovereign democracy emerged. The people were seen as the source of sovereign power, and they exercised it through popularly elected officials. In the late nineteenth century, states began to require the election of the attorney general. Today, 44 states elect the attorney

general. Of the six states that appoint the attorney general, most provide for appointment by the governor, and some by the legislature or the state supreme court. <sup>(3)</sup>

With the evolution of sovereign democracy, state courts decided that state attorneys general now represented the rights, prerogatives, and interests of the general public in carrying out their common law duties of office. In effect the courts substituted the public for the king as the client of the attorney general, thus giving the attorney general the power to protect public prerogatives, property and revenue. Indeed, there are several state supreme court opinions which hold that an attorney general may bring any action in court deemed necessary to enforce or protect any public right or interest and as a corollary power may exercise virtually plenary discretion in the disposition of such action. However, while state attorneys general possess these common law powers, state constitutions or statutes may limit or preclude the exercise of some or all of them. <sup>(4)</sup>

Another development in the United States has been the expansion of the

powers of state attorneys general through the delegation of direct statutory grants of authority by the various state legislatures. For example, in most states, there are anti-trust and consumer protection trade regulation laws and the power to enforce them is delegated by most legislatures to the attorney general.<sup>(5)</sup>

Finally, the office of the state attorney general has been strengthened as an advocate for the people on a broad range of issues for reasons relating to its institutional characteristics. First, the office possesses a firm place in the tradition of English and American institutions; second, the office is a statewide one and, therefore, it has the advantages and disadvantages of statewide exposure and argument; third, the office is also closely connected to the state's political chief executive through the powers to give legal counsel to state agencies and to represent them in litigation; fourth, the office has a close connection to the judicial system; and fifth, the office is staffed by attorneys, and thus, a natural power base exists in the legal community of the state based upon the professional relationship among members of the Bar.<sup>(6)</sup>

#### **The Role of State Attorneys General in Public Policy Decisions**

It is practically impossible to make any public decision without knowing first, the legal parameters within which the agency or public official may act; and second, the adverse legal consequences

of proposed courses of action within those parameters. For example, actions outside the scope of a public official's statutory powers could expose the official to personal liability for any damages caused as a result of the action.

Frequently, the practical boundaries of these legal parameters are determined by political constraints. Thus, in many public decisions involving legal issues, attorneys general play a significant indirect role through furnishing legal advice to help public officials balance the adverse legal consequences of their decisions within those politically imposed parameters. An example of this balancing occurs when deciding what can constitutionally be done to ensure local Alaskan hire by out-of-state companies when the most direct way to do so through mandating it by statute is unconstitutional based on cases decided by the Alaska and U.S. supreme courts. In this area, the legislature enacted a bill allowing the Alaska commissioner of labor to designate economically distressed zones based on economic and employment characteristics and require local hire on public projects within those zones. The bill was drafted with the state attorney general's advice. It was not totally politically acceptable, but was the best legal position constitutionally permitted based upon U.S. Supreme Court opinions. Even this new one has been challenged by a contractor as unconstitutional. Therefore, this issue will once

again be reviewed by the appellate courts.

The legal advice given to state officials engaged in making these public decisions is frequently found in advisory opinions, a written memorandum from the attorney general which answers a question of law posed by any public official in the state executive or legislative branch of government. This mechanism, next to oral advice, is the most frequently utilized tool in public legal practice and plays an important role in policy decisions.

The legal status of opinions by attorneys general has been interpreted frequently by the courts. This status varies from state to state. The judiciary and the legislature generally treat them as persuasive, but not controlling on the legal issues they address. Several state courts and some state statutes provide that public officials of the executive branch are bound by them. Even where they are not recognized as binding on executive branch officials, most recipients follow them. The advantages in complying with them are, first, it can shield the official from the political consequences of a decision; and second, it allows the public official to retain official immunity from any personal liability for actions taken in reliance on the opinion.<sup>(7)</sup>

#### **The Powers, Duties and Role of the Attorney General in Other States**

The powers and duties of other state attorneys general range from a maxi-

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*In Support of Election:  
"An elected attorney general would be 'the  
people's attorney' and function as an  
ombudsman and watchdog for them."*

---

mum of highly centralized, exclusive authority to provide legal counsel to the state, litigate on behalf of the state and prosecute crimes to a minimum of shared state legal authority with no statewide criminal prosecution jurisdiction. For example, state attorneys general do not possess statewide criminal prosecution jurisdiction with the exception of Delaware, Rhode Island, and Alaska. In other states criminal prosecution is conducted by elected or appointed municipal, county or city district attorneys.

In addition, attorneys general usually do not have exclusive authority to represent the state in litigation or to be the exclusive legal advisor to state agencies. In many states, the governor's office has its own general counsel and many state agencies have their own house counsel. In those states, the attorney general represents the governor or agencies only in court. Legal advice to the governor or agency prior to litigation is furnished frequently by house counsel. In most states, while the attorney general issues official opinions upon request and thus, can influence public policy decisions; frequently, the attorney general does not play a significant policy making role within the state administration because the attorney general is a competing elected official. Exceptions to this situation exist when the governor and attorney general are political allies, share the same philosophy, or are personal friends.<sup>(8)</sup>

#### **The Powers, Duties and Role of the Attorney General of Alaska**

In Alaska, the attorney general is a member of the governor's cabinet. As such, the office functions as the general counsel to the governor and state officials. Thus, the attorney general plays a constant role in the development and formulation of public policy on a wide range of issues.

In addition, the Alaska Supreme Court has stated that the attorney general has the exclusive authority in the state government to make any and all decisions relating to the disposition of any state litigation and the exercise of this discretion by the attorney general within constitutional bounds is not subject to judicial review. However, in order to maintain good attorney-client relations, the attorney general rarely exercises such authority without consultation with and concurrence by the state agencies involved. In major cases, the attorney general also consults with the governor and, if necessary, the legislature.<sup>(9)</sup>

The Alaska attorney general is appointed by the governor, confirmed by the legislature, and serves at the pleasure of the governor. In Sections 44.23, 010-060 of the Alaska Statutes, the legislature created the Office of the Attorney General as Chief of the State Department of Law and vested that department with certain powers. Those powers are as follows:

1. Possession of authority as the ex-

clusive legal advisor to the state executive branch of government, exercising this power through the drafting or reviewing of all executive branch legal instruments and legislation, and the rendering of legal opinions;

2. Representation of the state in all civil litigation;

3. Prosecution of all violations of state criminal laws;

4. Initiation of actions to collect state revenue;

5. Recommendation to the legislature of necessary changes in the laws;

6. Promotion of uniform laws adoption;

7. Preparation of information on landlord and tenant rights;

8. Possession of exclusive authority to enforce the consumer protection and anti-trust laws; and

9. Possession of all common law powers generally inherent in the office of the attorney general. Thus, the Alaska attorney general is an example of the highly centralized exclusive legal authority model.

#### **Arguments in Support of Electing the Attorney General**

The theme in the arguments supporting the election the attorney general is a simple one focusing on the independence that direct election would give the office. An elected attorney general would be "the people's attorney" and function as an ombudsman and watchdog for them. Independent

election would mean that the attorney general was not the creature of a particular administration. As such, the attorney general would be free to render legal opinions solely on the basis of the law and not as a legal advocate for the administration. In addition, it is argued that an elected attorney general would be free to oppose policies of the state government that are considered inconsistent with the law and to investigate and prosecute apparent wrongdoing both in and out of government without fear or favor. <sup>(10)</sup>

Also, it is argued that the attorney general is elected in 44 states and the concept appears to be working in those jurisdictions. Some also argue that the attorney general's work is in areas where the governor has little or no interest, such as consumer protection, antitrust enforcement, and criminal prosecution. Thus, much of the work does not interfere with the executive responsibilities of the governor's office so that the results of the electoral competition are not as severe as supporters of the appointment process argue. It is also argued that if a governor wants house counsel to furnish legal advice to the governor's office, most governors can appoint such staff counsel. Furthermore, proponents of election argue it is not even necessary for the attorney general to act as general counsel to the governor's office. In addition, some also argue that because of the legal power of the office, an attorney general's duties are of a higher

order, similar to that of a judge, and therefore, the attorney general should have the elected independence of a judge. <sup>(11)</sup>

#### Arguments in Support of Appointing the Attorney General

The arguments in opposition to the election of the attorney general and in support of appointment by the governor are more complex because of the need to discuss how an appointed attorney general impacts the structure and relationships within the executive branch of state government. The focus of the argument is based upon the need to strengthen the executive branch of government through the appointive power of the chief executive. <sup>(12)</sup>

Proponents of the appointment process believe that good management requires an appointed attorney general so that the governor can have a philosophically compatible, cohesive, and unified team to carry out the responsibilities of the executive branch of government. Thus, the political accountability for actions of the executive branch and the executive responsibility for those actions are lodged in the office of the governor. It is clear where the responsibility lies and the governor is the one answerable to the public. <sup>(13)</sup>

In addition, they argue that when governors are forced to deal with a competing elected attorney general, there may be some question as to whether or not the advice, no matter

how wise or legally sound, will be taken or looked upon with suspicion and hostility, thus giving rise to conflict. This is because the governor and attorney general would be bringing different policy perspectives to the same public issue. These perspectives may be rooted in different constituency bases. As both are elected, neither one can be considered a final authority to resolve the issue.

Some argue that electing the attorney general can delay the policy resolution process. They point out that in many states with an elected attorney general, governors appoint their own general counsel and, in addition, house counsel are appointed frequently by state agencies accountable to the governor. These house counsel may provide conflicting legal advice to that of the elected attorney general. The effect of this conflicting advice can be to delay resolution of those issues within the executive branch. In addition, whenever there is litigation involving state agencies, house counsel may file friend of the court briefs or otherwise intervene in court asserting a position on legal issues different from

that of the elected attorney general. Proponents of the appointment process argue that those different positions can confuse the legislature, the public, and the courts on the executive branch policy. <sup>(14)</sup>

Advocates of appointing the attorney general also argue that electing the attorney general will increase state operating budgets. First, the governor

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*In Support of Appointment:  
"Good management requires an appointed  
attorney general so that the governor can have  
a philosophically compatible, cohesive and  
unified team . . ."*

---

will insist on a general counsel and house counsel for agencies that are responsible to the governor's office. Thus, it will be necessary to pay for an additional layer of attorneys in the executive branch. Second, in order to maximize the perceived benefits of election, the elected attorney general must have additional, duplicate, independent support staff, not answerable to the governor, to execute personnel, budget, and other administrative policy or the governor could unfairly infringe on the attorney general's independence of action.

In response to the argument that only an elected attorney general can investigate and prosecute wrongdoing in state government with the appropriate degree of independence, proponents of the appointment process argue that the attorney general is not the governor's personal lawyer but the attorney for the institution of the governor's office.

Also, they point out that as a member of the legal profession, the attorney general is affiliated with the judiciary and functions as an officer of the court. Thus the appointed attorney general possesses the prerequisite professional independence from the governor. They believe that the appointed attorney general is capable of investigating all officials of the executive branch of government, including the governor, and prosecuting wrongdoing if necessary.

This is because of constraints placed upon the holder of the office by the statutes, regulations, rules of court, and

canons of professional and prosecutorial ethics which require the attorney general to act in these criminal matters based only upon the evidence, the law, and the canons. They also believe that to make decisions in these matters based upon personal and political reasons exposes the appointed attorney general to charges of obstruction of justice and the possibility of suspension or disbarment from the legal profession.

Subsidiary arguments in support of appointing the attorney general can also be made. Some argue that appointed attorneys general do "represent the public" and the misperception that they do not is created because they have no need to generate favorable publicity by constantly calling attention to external achievements in order to create an image as "the people's attorney." It is also argued that the appointed attorney general acts just like an ombudsman through the rendering of legal advice to state officials as a member of the governor's team. This advice helps to ensure that these officials comply with the statutes and regulations governing their programs, and enforce fairness and impartiality in government dealings with the public.

Another argument in support of appointment is that an elected attorney general must allocate time to fund raising and other political activities, thus detracting from that required to manage the attorney general's office and resulting in a reduced credibility for the office

because it will be perceived to be too "political." Legal opinions issued by an appointed attorney general are likely to be more professional because there is no need to pay attention to political polls when considering legal issues.

Some argue that interpreting the law and running a large law office are essentially technical tasks and it is not necessary that the official charged with these duties be elected. Also, it is believed that highly qualified attorneys would not become attorneys general if they had to run in a statewide election.

Finally, those who argue for appointment also have some tradition on their side. They state that no one has ever seriously suggested electing the United States attorney general. They believe that the people do participate in the selection of the appointed attorney general through their legislator when the legislature conducts the confirmation process, not unlike the advice and consent of the U.S. Senate over presidential nominees for attorney general.<sup>(10)</sup>

#### Conclusion

The underlying issue in these arguments is how the election of the Alaska attorney general affects the balance of power among the branches of state government and the policy-making process within the executive branch of government. In essence the argument revolves around whether one believes in a strong or weak executive branch

of government. The current strength of the Alaska executive in exercising its authority is its ability to speak with one voice. When the attorney general is elected, the ability of the executive branch to speak with one voice to the legislature, the judiciary and the public is altered and the accountability for executive branch actions is split. If one believes that the power of the executive branch should be divided or decentralized through direct electoral accountability of some of its parts, then one generally supports election of the attorney general.

An elected attorney general has specific constitutional and statutory duties of an executive nature. Those duties may include litigating civil law suits to enforce compliance with state law and to protect state interests and prosecuting violations of state criminal law. Both civil and criminal enforcement are based on the police power to protect the health, welfare and safety of society. These enforcement functions are a key element of executive authority, in essence, the power to force compliance with the law.

If the attorney general is elected, this power to enforce state law will be split between two elected officials. Those who support election believe this split serves to check potential abuses of executive power and makes the executive more responsive. Those who support appointment believe this system leads to

frustration, delay, and a lack of responsiveness by the executive branch of government. Thus, depending on one's philosophy of government, the same facts are viewed quite differently. As the discussion demonstrates, this debate is really about two different views of state government and is not new in our history. The historical development of state constitutions in the country reflects this quandary of a strong versus a weak executive. Debate over the election of the attorney general is only a part of this larger issue.

-APAJ-

#### References and Notes

(1) See generally *State v. Finch*, 280 P. 910 (Kan. 1928); A. Sill (Attorney General of New Jersey), *Common Law Powers of the Attorney General* 1-6 (1967); 7 Am. Jur. 2d *Attorney General* Sec. 9, at 7-8 (1980). In addition, the common law powers of the attorney general eventually were summarized in Blackstone. Blackstone concluded that the attorney general could investigate and prosecute actions necessary to protect the real property of the King, review lands and chattels that should be held by the King, repeal royal grants or patents, recover for damages done to royal property, possess unclaimed property, examine the basis of an individual's claim to office, franchise, or privilege, compel admission and remission of a properly appointed official to his office, ensure proper maintenance of public charities and trusts, and initiate, without prior

indictment by grand jury, misdemeanors criminal prosecutions and, after grand jury indictment, felony prosecutions. W. Blackstone, *Commentaries* 27, 257-64, 427; see A. Sills, *supra*.

(2) *People v. Kramer*, 68 N.Y. Supp. 383, 386 (1900); National Association of Attorneys General, *Powers, Duties and Operations of the State Attorneys General* 77-79 (1977). A partial listing of the common law powers found to be inherent in the office of the attorney general by several state court decisions can be summarized.

Attorneys general have the power to:

- 1) Recover damages for unlawfully removed sand and gravel from state tidewater lands;
- 2) Abate public nuisances through equitable actions;
- 3) Intervene in lawsuits over contested wills when the state has a possible interest;
- 4) Challenge a reduction of state tax assessments;
- 5) Institute actions to collect unpaid taxes and premiums for a state worker's compensation fund;
- 6) Seek removal of public officials for misconduct in office;
- 7) Proceed in equity to cancel the fraudulent registration of voters;
- 8) Enforce the restricted provisions of a deed from the state;
- 9) Enforce public and charitable trusts;
- 10) Bring suit to cancel a fraudulent procured United States patent for either land or an invention;
- 11) Intervene when the constitutionality of a state statute is attacked;
- 12) Challenge the constitutionality of a state statute;
- 13) Investigate criminal activities and appear

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*"In essence the argument revolves around whether one believes in a strong or weak executive branch of government."*

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before a grand jury; 14) Institute and dismiss criminal proceedings; 15) Succeed the local district attorneys in criminal prosecutions; 16) Make any bona fide disposition of these actions that in his or her judgment would be in the best interest of the public. A. Sills, *supra*, at 8-9.

(3) NAAG, *supra*, at 77-79.

(4) 7 Am. Jur. 2d *Attorney General* Sec. 9, at 7-8; Sec. 18, at 22-23. See *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950-51 (Alaska 1975); *State ex rel. Shevin v. Yarborough*, 257 S.2d 891 (Fla. 1972); *State v. Finch*, 280 P. 910, 911-12 (Kan. 1929); *Board of Public Utilities Commissioners v. Lehigh Valley Railway Co.*, 149 A. 263 (N.J. 1930).

(5) See, e.g., AS 45; see generally National Association of Attorneys, *Powers, Duties and Operations of State Attorneys General* (1977)

(6) See generally T. Morris and W. Thompson. *The Attorney General as Public Advocate* 2 (1985).

(7) National Association of Attorneys General. *Representing State Agencies* (1979); 7 AM. Jur. 2d *Attorney General* Sec. 11, at 10-12.

(8) See generally National Association of Attorneys General, *The Structure of State Legal Services* 20-38 (1977)

(9) *Public Defender Agency v. Superior Court*, 534 P.2d 947, 950-51 (Alaska 1975).

(10) Report of Maryland Attorney General Francis B. Birch to the Constitutional Convention of Maryland (Sept.

29, 1967); Position Paper by New York Attorney General Lewis J. Lelkowitz, Constitutional Convention Committee on the Executive Branch (June 1, 1967); *Attorney General Should Be Elected--Not Appointed*, Attorney General Clarence A.H. Meyer, Outline of Remarks, Nebraska Constitutional Convention. See generally National Association of Attorneys General, *Powers, Duties and Operations of State Attorneys General* (1977); transcript of testimony House State Affairs Committee on HB 456 ("an Act authorizing an advisory vote by the qualified voters of the state on the question of the election of the attorney general") (Jan. 20, 1984).

(11) See note 10, *supra*.

(12) National Municipal League. *Model State Constitution* 65-66 (6th ed. 1963).

(13) See generally letter from Attorney General Norman C. Gorsuch to Senator Patrick Rodey, Chairman of Senate Judiciary Committee, discussing SJR 9 ("Elected Attorney General") (Apr. 23, 1985); transcript of testimony, House State Affairs Committee, on HB 456 (Jan. 20, 1984).

(14) National Governors Conference, Center for Policy, Research, and Analysis. *Legal Advice for the Governor* (1976).

(15) See note 13, *supra*.

(16) *Id.* 4

*Mr. Gorsuch is a visiting Associate Professor at the University of Alaska Southeast, School of Business and Public Administration.*

-APAJ-

HJR 19 fiscal analysis:

This fiscal impact in below is for illustration purposes only and is based on 1997 costs and salaries. The fiscal impact associated with an elected attorney general would not be realized until FY03, and accurate costs will need to be identified then. Additionally, if the voters approve the constitutional amendment calling for an elected attorney general, the functions and duties of the attorney general will need to be defined which may result in further fiscal impact.

This note assumes an increase in Governor's staff by three positions -- an attorney, rg. 26, a paralegal, rg. 19, and an executive secretary, rg. 14. Fiscal note further assumes existing state-owned office space would be available and does not include lease costs.

Personal services:	three PFTs	199.5
Contractual:	comm., phones, postage, tolls courier svcs., subscripts, etc.	18.6
Supplies:	office/library supplies	9.6
Equipment:	office furniture, DP and communication equipment	<u>39.2</u> *
	Total first year costs:	266.9

\* 39.2 first year set-up costs only and not required in subsequent years.

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ALASKA CONSTITUTIONAL CONVENTION

January 14, 1956

FIFTY-THIRD DAY

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it appeared that, at least the feeling was drawn out th  
(original copy illegible) whole proposal had almost been  
wrecked. I believe that (original copy illegible) tion can be  
changed so it will be acceptable and for tha (original copy  
illegible) I would like to have the reconsideration at this  
time with (original copy illegible) possible amendment  
afterwards if the section is retained.

PRESIDENT EGAN: Is there further discussion? Section 6 is  
now before us once more. Mr. Boswell.

BOSWELL: I would like to trace the evolution of this  
particular article through the Committee. Our first decision  
was, should we have a lieutenant governor? We decided that  
was a luxury which we could not afford in this new state. So  
our second decision was to try to set up a working successor  
to the governor, and it seemed a logical choice would be the  
secretary of state. Our third decision was regarding the  
election, whether this secretary of state should be elected or  
appointed, and we felt it would be a little more democratic,

more acceptable to the public, give them more to say, if he were elected. Then the question was, how can we elect a secretary of state and be certain he would be compatible with the governor and be of the same party as the governor. I asked Mr. Cooper this question on his previous amendment, how he could expect this elected secretary of state to be of the same party and he could not answer. I realized I was tossing him a curve at the time because we could not answer it; so that was why we came up with this particular section and we decided then that we could accomplish the purpose we were after by nominating the secretary of state and the governor separately and pairing them to run in the final election so that we would at least be certain that they would be of the same political party, and I think that is the important thing on it. It would be obvious to all that if we had a governor of one party and a secretary of state of another party that they could not only not work together, but there would be terrific confusion if that secretary of state ever succeeded to the governor. I think when the people of Alaska have this opportunity to nominate a secretary of state and realize the important position that he holds, they are going to be very careful of the man they nominate, and I don't think he will be the type of man that Mr. Buckalew would have us think he would be. Now if you think the Committee approach has been illogical or if you want to "buy a pig in a poke", support Mr. Buckalew's amendment. If not, I think the committee proposal has merit.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I seconded Mr. Buckalew's motion and I have always felt that Section 6, as worded for the reasons that we stated yesterday, injects an undesirable element in our constitutional government, and as far as a "pig in a poke", and I want to direct my remarks solely to that. There is an amendment on the desk

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which reads as follows: "That Section 6 be stricken and the following substituted: 'There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. He shall perform such duties as may be delegated to him by the governor. He shall

perform such administrative functions as are prescribed by law'." The amendment goes on and deletes the words "person elected" in line 12 of Section 7, and that is all there is to it. Now that amendment prescribes a constitutional secretary of state. The reason for that is so that the order of succession is preserved. It makes him an appointee of the governor, so the objection as to political faith is immediately removed. He will be of the same political party. It makes him a working secretary of state, because as far as executive duties are concerned the governor may delegate some to him. Administrative duties which of course do not infringe upon the executive may be prescribed by law. That avoids any conflict between a secretary of state working contrary to his governor, so this amendment preserves the order of succession exactly as it was in the original proposal, except only that the secretary of state is an appointive official, but the order of succession is preserved. Everything of the original proposal is preserved, and it is not "a pig in a poke". There are other equally, I think, desirable alternatives. There is no magic about this thing. It is very simple. In answer to Mr. Marston's statement, I am quite sure by 12 noon we will be all through with this thing. We could adopt many healthy proposals in that time, too, all of them better than the present Section 6. I have talked to other people who have equally sound alternative methods, none of which require huddles or delay, very simple, very clear and generally unobjectionable, so I say that if we do reconsider this matter, there are sound alternates and I do think though, that the present section or the section that was submitted to us must be improved.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it appears to me that the only difference between Mr. Hellenthal's proposal as he has talked about it here, and the committee proposal is the point as to whether the secretary of state is going to be elected or whether he is going to be appointed. I am afraid we are going to get ourselves in a box here if we vote on the motion to reconsider. I am afraid we may be foreclosing the possibility of considering Mr. Hellenthal's amendment. I am wondering if it might not be more orderly to hold the matter of the reconsideration until after we have heard Mr. Hellenthal's

amendment. I am afraid we will be in the same position we were in yesterday where we struck certain language and then we had to have an amendment to put the same language back in. As it now stands, we have stricken Section 6. If we take the motion to reconsider and if that

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motion to reconsider is against Mr. Buckalew's amendment, we will be in the position then of having failed to strike the section and then we have another motion come along to strike the section over again. It seems to me that the primary question at the minute is whether the body does or does not want an elective secretary of state.

PRESIDENT EGAN: Mr. Londborg.

LONGBORG: Mr. President, I would like to speak another word for the committee proposal as we drew it up. As I see the difference in the remarks now of Mr. Hellenthal and his would-be secretary of state, and the one that the Committee provided for, is this, of a time element as far as when the governor picks his partner. In other words, has the Committee made it possible that the governor would have a perfectly compatible working partner; he would choose that man or the party would work together and pick that man before the election, or if the law so provided, he may be picked in the primary to be the running partner of the successful nominee of the primary for governor. Now, as I see it, the pressure that is going to come upon the governor in selecting a secretary of state will be just the same as the pressure if he were to pick him before he was elected as governor. This man that will be selected as secretary of state after the governor is elected, will be a man who can take over the governor's office for a period of three or three and one-half years, maybe even more should the governor die. You can be sure there is going to be just as much pressure on the governor to attach on to him somebody the people don't want but somebody to whom the party owes a debt; but if you have the secretary of state as just a working man and not succeeding to the governor's chair, that would be a different thing, but if he is to fall in line for the governorship, then we stand the chance of having a person become governor for a period of one. two, three, three and one-half, and a day short of four years. The people would as

a whole perhaps reject just because of some pressures put upon the governor to put that man in as his secretary of state. I think the fair way to the people would be to have that man along with the governor on the general election ticket. Then if we don't feel that the governor chose wisely or the party chose wisely, they can both be rejected. The people have a choice. I can see that the strong executive would be one that would just pick all of his own men and those he doesn't want, he just throws away, but I think there are going to be pressures upon him in the selections, and that is one pressure that can be revealed before we take the whole "poke". We are going to know what we are getting and they can be accepted or rejected as a team.

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becoming governor? For your information Mr. Rivers, I'll give you the names. Thomas Dewey, Alfred E. Smith, Herbert Lehman and Franklin Delano Roosevelt.

PRESIDENT EGAN: Mr. Armstrong, would you take the Chair?  
(Mr. Armstrong took the chair at this time.)

EGAN: Mr. Chairman, I would like to say that I realize that the Committee on the Executive has put in a lot of days, a lot of hours, just simply a lot of time on this particular question. What they have come up with they feel is the best that is possible. I know that and give them every credit and I have respect for their feelings, but I have not been completely in favor of this type of provision at any time since it was under Committee discussion. I am opposed to having the man who would be next in line in succession to the governorship not actually elected in some manner by the people of the new state. I would like to say as to that that I also have that feeling with relation to the Vice Presidency of the United States, that I am not in agreement with that particular means that we now use and have used all along through our history in providing for the Vice President of the United States. This feeling does not conflict at all with my feeling

on the national level relative to that question. I feel that as Mr. Victor Rivers has stated, that if such an amendment -- I voted for the deletion of Section 6 -- with that feeling in mind, that actually a secretary of state won't be running for any office. The people won't have one thing to say about who shall be secretary of state under Section 6 as I read it. Someone will choose that particular man and he will become as Section 6 reads, "the governor of the State of Alaska." Now, if as Mr. Victor Rivers has stated, he will offer an amendment that will definitely guarantee to the people of Alaska that the man who will become secretary of state will be elected by the people in a primary election, then I would agree with going along with Section 6 if I knew that that particular amendment was going to be offered, and that we were going to have a chance to vote upon that. I also don't agree with the line of succession, with the secretary of state being appointed. I can see no reason why we should not have Section 6 as it is as well as accepting an amendment that would allow the governor to pick his own successor. I am not any more in agreement with that than I am with Section 6 as it is written now. In thinking this over, I am also not in agreement with having an amendment produced that will let the direct line of succession go from the governor, say in the manner that was suggested, that the secretary of state if the governor died, would call the legislators into session and then they would select the governor. I am not in agreement with that because the people do not elect the representatives to the legislatures and their senators with the idea that one of their number will become the governor of Alaska. I think that the best idea so

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far that I have heard is this particular proposal that we nominate, at least give the people some choice in the matter, it will be a real choice. Let them nominate the man who will run in the package with the candidates for governor in the general election. I think that that would be a proper means of allowing the people to elect their governor and also the successor to the governor. I would go along wholeheartedly with such a proposed amendment. That is my feeling on this question, and if I knew that that amendment was going to be adopted, I would then vote against the motion to strike Section 6 from the proposal.

Another thing is that the voters become apathetic as time goes on and pretty soon you

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have a small percentage of people electing your officials, whoever they may be. One reason I don't think we should be too fearful of the governor's making a bad appointment is that we are giving him the authority to make all the other appointments. The secretary of state is actually an administrative official, really. Normally he has a lot of administrative functions, just as our present Secretary of Alaska has. He does not have to necessarily have the qualities that would make him a good governor, although he should be in very close touch with the governor as he would be under our thinking here, so that in the event of an emergency the executive department would continue to run smoothly when the governor was absent. So there is a good deal to be said on both sides, and so it seems to me it does boil down to just one thing, do we want the people to elect this man or do we want him appointed?

GRAY: I'll speak once and forever more on this subject. To me, I feel that the Committee's plan is the best. We are talking about one thing, we are talking about the governor and his successor. The probability of a successor is possible but

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TONY KNOWLES, GOVERNOR

in general we can assume that the elected governor will carry out his term. There is a great deal of emphasis placed on the secretary of state becoming the governor. Now what we are talking about is efficiency in the state government, and we are selecting our man by the voice of the people and they are selected on a popularity basis with efficiency as a second regard. We try to get the most efficient man that is popular. In the Committee plan I do believe that you will receive the most efficient secretary of state, because if he is selected and if he is unpopular, it will be a detriment to the man running as governor. I believe like Mr. Nerland, I believe that in selecting a secretary of state we must select him for popularity but primarily for efficiency, which is the purpose of the whole executive department.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I support the Buckalew amendment and in turn the proposed amendment which Mr. Hellenthal is trying to submit. I feel that this issue is entirely a political issue within parties. I can see that under the particular system that we have here that we are just trying to pull a veil over the voters' eyes as to allowing them to elect a secretary of state because it ties them too closely to the governor. I could see that in a political convention that this Section 6, as written, would enable a party to set up a fairly strong piece of political machinery. I can't see where the primary election would do so good because we all know there are factions in political parties, and you know that from time to time in our past history we have had very strong feelings and splits in both major parties in Alaska, so I can see where we would have a strong man of one faction running for secretary of state and a strong man of the other faction running for governor, and if they were tied together

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in the general election it would not give you your Utopia of a strong executive. I feel that by appointing, that your governor-elect or your governor that becomes elected, would be more or less the leading figure of the political party that gained control of our government, and feel that to this end he should have the prerogative of choosing his own cabinet or major officials.

NORDALE: Mr. President, I think that Mr. Davis put his finger on the problem when he said it was a matter of do we want to elect a secretary of state or do we want to appoint him. I am not too sure just how strong my convictions are, but I would like to say this, that one of the problems that has faced most of the states, and I think one of the reasons why there has been a swing away from elected officials is that for one thing, as the years go by the ballots become cluttered with elected officials. Of course, ours does not look as if it would be in much danger, except we do have our election of senators, representatives, and at least three members of Congress to elect plus initiatives and referendum and all that sort of thing, but the swing toward the appointment of officials has been to keep some sort of coordination in government. Any man elected by the people is pretty independent, and that is why you have a lack of coordination in government where you have a lot of elected officials.

SWEENEY: I just wanted to say that I want to have a secretary of state elected. I want him compatible with the governor. I want him nominated in the primary and I want him teamed with the governor in the general election. That is all I want, and I do not believe that it is destroying the strong executive. To talk about splinters in either party, I think if you did happen to get one from one faction or one from another, it might be just the thing that would cement your party, and I hope you vote down the Buckalew amendment.

AWES: I have an amendment, Mr. President.

PRESIDENT EGAN: You may present your amendment, Miss Awes.  
The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Line 18, page 2, strike the words 'secretary of state' and substitute 'lieutenant governor'; line 21, strike from 'and' through word 'governor' ending on line 2, page 3; line 2, page 3, strike 'secretary of state' and substitute 'lieutenant governor'; lines 4, and 5, page 3, strike words 'secretary of state' on both lines and in each case substitute 'lieutenant governor'."

AWES: I move the adoption of the amendment.

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PRESIDENT EGAN: Miss Awes moves the adoption of the proposed amendment.

BUCKALEW: I second the motion.

AWES: Some of the delegates here were perhaps surprised at the amendment thinking that the idea of a lieutenant governor had been completely buried. That is what bothered me. I am afraid that the idea of a lieutenant governor was buried perhaps too soon. The only argument I have heard is that the lieutenant governor does not play too important a role and it costs money; therefore we should do away with him. Yes, it does cost something to have a lieutenant governor; you have to pay him a salary; you have a few extra lines on the ballot; you have to provide an extra room in the statehouse. When you come down to it, it costs only a drop in the bucket for the total cost of running a state. Therefore, I think the question is not what does he cost, but does he serve a purpose? I think he would serve one very real purpose. I

agree we should elect a successor to the governor. I think Alaskans have been so fed up in the last 50 or 75 years with appointive governors that they don't want to hear the word again. However, it bothers me considerably to elect the secretary of state. I don't think we should put over what some people call a package deal and give the people the form of electing a secretary of state without the choice. On the other hand, to elect the secretary of state independently, we know there are not only different parties in Alaska but there is a lot of factionalism in the parties, and if you get a lieutenant governor who is of a different faction than the governor, because he isn't too effective while serving as lieutenant governor it would not make too much difference, but the secretary of state is right-hand man to the governor, and if you get a secretary of state who is of a different party or of a different faction in the same party, he can hamstring the governor and make our whole government ineffective for the whole four years he is in office, and I think the fact that we want a strong executive makes the problem even more pressing, and therefore I suggest that we consider or reconsider, as the case may be, the idea of having a lieutenant governor in the State of Alaska.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Miss Awes be adopted by the Convention?" Mr. McLaughlin.

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McLAUGHLIN: I am a bit confused. Would the secretary read the section as it would read if it were amended.

PRESIDENT EGAN: Would the secretary read the section as it would read if it were amended.

CHIEF CLERK: "There shall be a lieutenant governor who shall have the same qualifications as the governor. He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor. The candidate for lieutenant governor who runs jointly with a successful candidate for governor shall be elected lieutenant governor. The lieutenant governor shall perform such duties

as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: Mr. Riley.

RILEY: I would like to address one question to Miss Awes. In distinguishing between the two titles did you mean to distinguish between duties in your discussion, Miss Awes?

AWES: Yes, I did. I was proposing a lieutenant governor in the traditional sense and then have the usual appointment of secretary of state by the governor to perform the duties of a secretary of state.

CHIEF CLERK: "There shall be a secretary of state who shall have the same qualifications as the governor. New material. "He shall be nominated in the manner provided by law for nominating candidates for other elective offices. He shall be elected at the same time and for the same term as the governor and the procedure prescribed by law." Delete the word "election". "The procedure prescribed by law for general elections shall provide that the electors in casting their vote for governor shall also be deemed to be casting their vote for the candidate for secretary of state shown on the ballot as running jointly with the respective candidate for governor. The candidate for secretary of state who runs jointly with the successful candidate for governor shall be elected secretary of state. The secretary of state shall perform such duties as may be prescribed by law and as may be delegated to him by the governor."

PRESIDENT EGAN: The Chair feels that the question that was asked by Mr. Kilcher was, are there any other necessary amendments to the following sections in order to make them conform completely with Section 6 as it is now written. Is that right?

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

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

PRESIDENT EGAN: Between Section 13 and Section 14?

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

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

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

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

BARR: I move the adoption of this amendment.

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

KNIGHT: I'll second the motion.

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

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

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

sure that he is on the right ground when he proposes something. In case we had a governor who wanted to bulldoze something through anyhow, if it were a little bit questionable, the attorney general might feel that he was obligated to the governor if he were appointed and his opinion might be biased a little bit. I wouldn't say that he would flout the law, but he could be biased a little bit to either one side or the other.

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

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

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providing for the election of a commissioner of labor. If we yield ground in one respect, we might as well elect our commissioner of welfare, our commissioner of education, and having provided those, I feel that we should go right down the list and completely dissipate the theory upon which the voting has taken place. It was with reluctance that I even voted in favor of the secretary of state as a co-runner for the governor. I am violently opposed to the election of the attorney general. I don't think the election of him accomplishes any purpose. The blunt fact is that there is a general misconception as to the function of the attorney general. The attorney general is a lawyer and his opinion is the equivalent of any other lawyer's. It can be attacked. Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is worth the paper it is written upon. It's impressive upon the state and the officials are bound by it until some irate taxpayer attacks it and the actions taken under the authority of it, and the courts can promptly overrule it. There is a misconception about the function of the attorney general, his functions are not quasi-judicial. He is another attorney giving an opinion, and if you could assure yourselves that he

would have the wisdom of a deus, those lawyers don't exist in Alaska as it has been evidenced by the variety of opinions expressed here before this body. I do oppose it, I think if we are going to have an attorney general, the power should be vested in the governor to appoint him, and that is without any screening by any judicial council or anything of the sort. If you're going to elect him, elect him, but by and large if you're creating a strong executive, then give him the power to appoint his own attorney general. The discrepancy has been pointed out in New York under the series, Governors and Administration of New York, which is put out under the American Commonwealth Series, it's pointed out that because of the fact that the attorney general is an elective office under the constitution, that is, the governor, in substance, has to rely on a legislative act passed in 1900 authorizing him to have private counsel. You're putting a diverse and possibly a discordant element into the executive branch. It isn't necessary. The courts can protect the government from the opinions of an attorney general appointed by the governor, and that attorney general does, in a sense, bear the same relationship to the governor as any attorney bears to his private client. It is an attorney-client relationship and the relationship has to be based on faith and personal selection. I would strongly recommend that there be no other elective offices in the state.

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PRESIDENT EGAN: If there is no objection, the rules will be suspended and Mr. Barr may have the floor on personal privilege.

BARR: I want to explain that since it is very clearly the intention of this body to have two elected officials, there is no point in me introducing this other amendment and holding up proceedings. I never intend to hold up proceedings at all. I realize the shortness of time here, so I will not introduce that amendment at this time, although in my own heart, I believe that we should have an attorney general and commissioner of labor elected.

SUNDBORG: I would like to know if we are creating anywhere in this constitution the office of the attorney general? And I ask it because in our article on direct legislation there is a provision that petitions for referendum and recall and the like, shall be filed with the attorney general who shall certify it to its sufficiency as to form, etc. Since we have not created that office, and I don't believe we should do it by indirection by assigning duties to the man whose office has not been created, I would like to be recognized at the end of this statement under the item of personal privilege, to make a motion and the motion would be that the rules be suspended and the Committee on Style and Drafting be instructed to make a substantive amendment in the article on direct legislation to provide that wherever the words "attorney general" appear, that they be changed to "secretary of state". I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. I wonder if all of you recognize what the problem is. I think we have now agreed that in the executive department we are going to have one other officer at least besides the governor. He will be called the secretary of state. It occurred to us in Style and Drafting that it would be entirely proper that the secretary of state should be the officer of the state with whom petitions under the initiative and under the referendum should be filed, that if he required legal services in order to satisfy himself that they were sufficient as to form, etc., he could get them from whatever officer of the state might be provided by

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legislation or otherwise for that purpose, but I think we are

probably being inconsistent and maybe we are making a mistake if we set up duties for an official called the "attorney general" and don't set up the office itself in the constitution.

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ALASKA CONSTITUTIONAL CONVENTION

January 14, 1956

FIFTY-THIRD DAY

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it appeared that, at least the feeling was drawn out th  
(original copy illegible) whole proposal had almost been  
wrecked. I believe that (original copy illegible) tion can be  
changed so it will be acceptable and for tha (original copy  
illegible) I would like to have the reconsideration at this  
time with (original copy illegible) possible amendment  
afterwards if the section is retained.

PRESIDENT EGAN: Is there further discussion? Section 6 is  
now before us once more. Mr. Boswell.

BOSWELL: I would like to trace the evolution of this  
particular article through the Committee. Our first decision  
was, should we have a lieutenant governor? We decided that  
was a luxury which we could not afford in this new state. So  
our second decision was to try to set up a working successor  
to the governor, and it seemed a logical choice would be the  
secretary of state. Our third decision was regarding the  
election, whether this secretary of state should be elected or  
appointed, and we felt it would be a little more democratic,

more acceptable to the public, give them more to say, if he were elected. Then the question was, how can we elect a secretary of state and be certain he would be compatible with the governor and be of the same party as the governor. I asked Mr. Cooper this question on his previous amendment, how he could expect this elected secretary of state to be of the same party and he could not answer. I realized I was tossing him a curve at the time because we could not answer it; so that was why we came up with this particular section and we decided then that we could accomplish the purpose we were after by nominating the secretary of state and the governor separately and pairing them to run in the final election so that we would at least be certain that they would be of the same political party, and I think that is the important thing on it. It would be obvious to all that if we had a governor of one party and a secretary of state of another party that they could not only not work together, but there would be terrific confusion if that secretary of state ever succeeded to the governor. I think when the people of Alaska have this opportunity to nominate a secretary of state and realize the important position that he holds, they are going to be very careful of the man they nominate, and I don't think he will be the type of man that Mr. Buckalew would have us think he would be. Now if you think the Committee approach has been illogical or if you want to "buy a pig in a poke", support Mr. Buckalew's amendment. If not, I think the committee proposal has merit.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I seconded Mr. Buckalew's motion and I have always felt that Section 6, as worded for the reasons that we stated yesterday, injects an undesirable element in our constitutional government, and as far as a "pig in a poke", and I want to direct my remarks solely to that. There is an amendment on the desk

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which reads as follows: "That Section 6 be stricken and the following substituted: 'There shall be a secretary of state who shall have the same qualifications as the governor. He shall be appointed by the governor. He shall perform such duties as may be delegated to him by the governor. He shall

perform such administrative functions as are prescribed by law'." The amendment goes on and deletes the words "person elected" in line 12 of Section 7, and that is all there is to it. Now that amendment prescribes a constitutional secretary of state. The reason for that is so that the order of succession is preserved. It makes him an appointee of the governor, so the objection as to political faith is immediately removed. He will be of the same political party. It makes him a working secretary of state, because as far as executive duties are concerned the governor may delegate some to him. Administrative duties which of course do not infringe upon the executive may be prescribed by law. That avoids any conflict between a secretary of state working contrary to his governor, so this amendment preserves the order of succession exactly as it was in the original proposal, except only that the secretary of state is an appointive official, but the order of succession is preserved. Everything of the original proposal is preserved, and it is not "a pig in a poke". There are other equally, I think, desirable alternatives. There is no magic about this thing. It is very simple. In answer to Mr. Marston's statement, I am quite sure by 12 noon we will be all through with this thing. We could adopt many healthy proposals in that time, too, all of them better than the present Section 6. I have talked to other people who have equally sound alternative methods, none of which require huddles or delay, very simple, very clear and generally unobjectionable, so I say that if we do reconsider this matter, there are sound alternates and I do think though, that the present section or the section that was submitted to us must be improved.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, it appears to me that the only difference between Mr. Hellenthal's proposal as he has talked about it here, and the committee proposal is the point as to whether the secretary of state is going to be elected or whether he is going to be appointed. I am afraid we are going to get ourselves in a box here if we vote on the motion to reconsider. I am afraid we may be foreclosing the possibility of considering Mr. Hellenthal's amendment. I am wondering if it might not be more orderly to hold the matter of the reconsideration until after we have heard Mr. Hellenthal's