ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9580 SENATE JUDICIARY

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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 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.

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.

ALASKA CONSTITUTIONAL CONVENTION

January 16, 1956

FIFTY-FIFTH DAY

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?

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2216

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 ofthe 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.

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2217

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

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 o 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

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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.

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

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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.

SUNDBORG: I move that the rules be suspended and that the Committee on Style and Drafting be instructed to insert "secretary of state" at points in the article on initiative and referendum

where the words "attorney general" appears.

GRAY: I second the motion.

PRESIDENT EGAN: It has been moved and Mr. Gray seconds the motion that the word "secretary of state" be inserted in lieu of the words "attorney general" wherever they may appear in the article on initiative and referendum. Is there objection to that request?

TAYLOR: I object.

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

R. RIVERS: I would like to back up the motion because I objected earlier in the day that we should have the attorney general draw the ballot heads and check the sufficiency of that proposed initiative bill, etc., but after I decided not to do anything about inserting "attorney general" in this section, it becomes necessary in the interest of consistency to say that those matters will be referred to the secretary of state who in turn can obtain the advice of the attorney general.

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

Senate Judiciary Committee

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

February 19, 1997

Mr. Tony Knowles
Governor of Alaska
State Capitol
Juneau, Alaska 99801

Dear Governor Knowles:

Yesterday, the Senate Judiciary Committee reviewed the sponsor substitute for SJR 10-- a resolution that calls for the election of the Attorney General.

As Chairman of the Judiciary Committee I think that it would be beneficial for committee members if you and/or Mr. Botelho attend the meeting scheduled to share your position on SSSJR10.

The Senate Judiciary Committee has scheduled a continuation of the hearing on SSSJR10 to be heard on February 26, 1997 in the Butrovich Room. In the interest of dealing with a concerned public, your testimony would be appreciated.

Sincerely,

Robin L. Taylor

Robin L. Taylor, Chairman
Senate Judiciary Committee

RLT/lc
cc: Mr. Bruce Botelho
Senate Judiciary Committee members

John G. Davies
ATTORNEY AT LAW

CENTURY PLAZA
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TELEPHONE (907) 373-6010
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February 12, 1997

Senator Lyda Green
State Capitol
Juneau, AK 99811

Dear Lyda:

I agree wholeheartedly with your efforts to have an elected Attorney General. I also believe that we should elect our judges. As an attorney who has been involved in the system for almost twenty (20) years, I don't particularly agree with the way the judges are selected. It is essentially the good ole boy system in which the Alaska Judicial Council selects judges who are recommend for appointment by their peers. Such a system continues to support the appointment of liberal judges who may be academically well qualified, but completely out of touch with the way people want law and justice administered. It is obvious that today we have a resurgence of conservative ideals regarding family, home, law enforcement, and punishment. The conservative nature of our people is not reflected in the judiciary whatsoever. In fact, during the Hickel administration, Governor Hickel rejected appointees, but was faced with no better selection on the second go around. Simply put, it is unlikely that a conservative attorney would ever be put forth for an appointment to any judicial position.

When I taught law at the University of Alaska, Matanuska-Susitna College, I was shocked to learn by survey of my students that they were actually ultra conservative. Here we were at a University which is generally noted for liberal thinking teaching issues of criminal justice. Virtually every student agreed that the problem with the judicial system was the breakdown in the nuclear family and the inability of parents to enforce proper behavioral standards with their children. With the breakdown of the home, the lack of discipline was then passed onto society in general. The students were shocked to find the prisoners under the Cleary decision have constitutional rights while incarcerated insuring limitations on housing, certain types of meals, recreational facilities, libraries, and even Pell grants. Students learned that 'hose in jail got federal assistance to college

courses while they had to go to work and study at night. This infuriated my students, and their attitudes were definitely pro punishment with little empathy for rehabilitation. The only way to get the system changed is to elect judges and attorney generals. I support your efforts.

Very truly yours,

John G. Davies

JGD:bw

2/11/97

PALMER AK

RECEIVED

FEB 14 1997

Ans'd.....

DEAR SENATOR GREEN –

I BELIEVE ALL OF YOUR PROPOSED AMENDMENTS REGARDIND THE ELECTION OF THE ATTORNEY GENERAL ARE VERY GOOD. I'M SURE IF YOU CAN GET YOUR AMENDMENT BEFORE THE VOTERS IT WILL EASILY PASS.

LOOKING FORWARD TO THE FEB. 15 SENIOR ISSUES MEETING AT THE BOROUGH BLDG. ——

Jack R. Straayer

JACK STRAAYER
627 S. Gulkana St
Palmer AK 99645

SJR10

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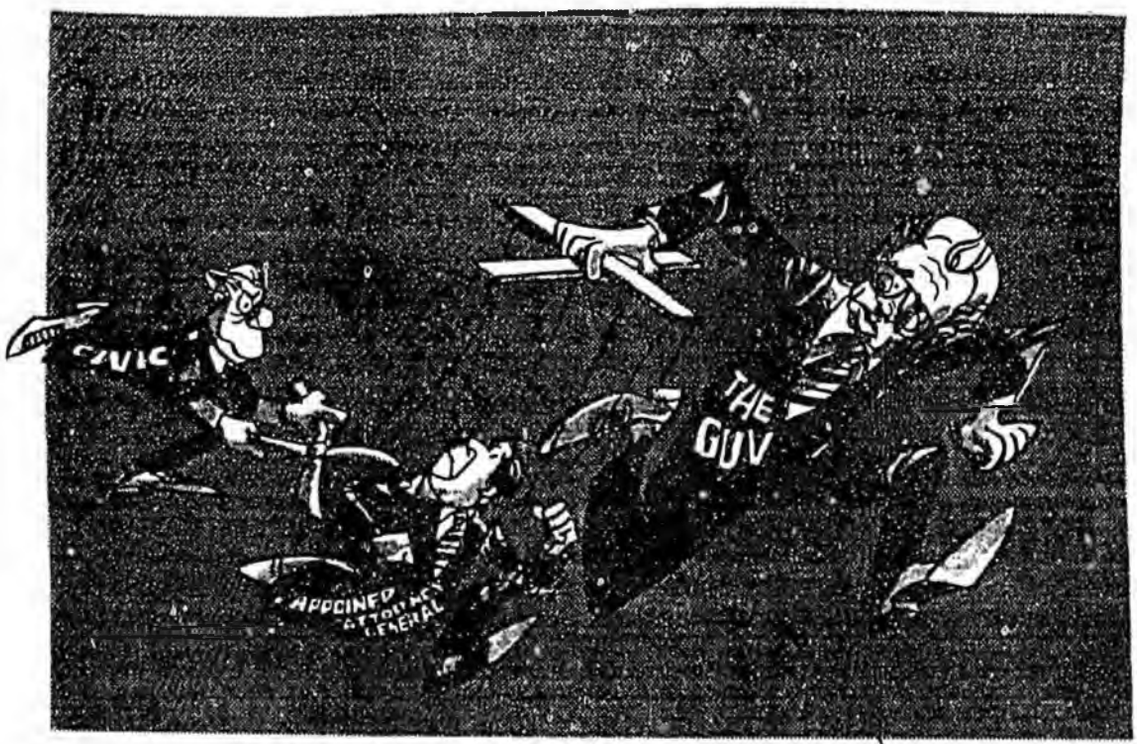
ALASKA FEVER



Elected Attorney General; Will of the People

The framers of the State Constitution, we believe, were wise to provide for a strong chief executive but we believe they were not wise in making the state attorney general appointive, rather than elective. Down through the years, it appears to us, that the various attorneys general, by and large, have not acted primarily in accordance with the will of the people, but the will of their bosses, the governors. All too often they have slanted their legal opinions, which are binding unless overturned by the courts, to further the political aims of their bosses, the governors. And in so doing, we believe they have often allowed the governors to take illegal and unconstitutional steps. At the same time all too often an attorney general has slated a legal opinion against the will of the majority, simply because his boss, the governor, is opposed to it.

This has resulted in a situation where the governor has become not just powerful, but almost omnipotent. Not only is he able to use the State Department of Law to further his policies and programs, however meritorious, but to block policies and programs with which he does not agree. The governor is powerful enough without making him overpowering. After more than two decades of statehood, it is apparent to us that the attorney general needs to be responsible to the people.

Some Alaskans — as the Anchorage Daily News has argued editorially — will contend that a switch to an elected attorney general will dilute accountability.

Said the News:

"The governor of Alaska is empowered by the constitution with strong executive authorities; that makes him the boss, accountable to the people and able to choose his own team in doing what he believes needs done. An elected AG obviously would have his own, possible separate agenda, and teamwork between that office and the governorship might fall apart. Both the governor and the AG could justify inaction by a merry-go-round finger pointing and accusation, and citizens would never know who to look to for responsibility."

The trouble with the latter argument is that it has been rejected by 43 of the 50 states as without merit: they have elected attorneys general because they believe the governor should have to comply with the law as all citizens, should not be above the law or be able to bend the law in carrying out his policies and programs. While there have been conflicts between governors and elected attorneys general, these have been considered justifiable and accepted by the people as a small price to pay for avoiding possible political maneuvering of appointed attorneys general.

Alaska's present governor opposes the change to an elected attorney general. He says if an elected attorney general's view are at odds with the governor's, he could seriously threaten or even thwart the governor's programs. And, of course, the reverse is true of an appointed attorney general.

Attorney General Norm Gorsuch is opposed to an elected attorney general saying such would undermine accountability and an attorney general running for office and collecting campaign funds would open the way to conflicts of interest. Yet Gorsuch, an appointed attorney general, is under fire now for accompanying Governor Sheffield on a fundraising trip in the lower states in January.

Rep. Rick Uehling (R-Anchorage) has sponsored a joint resolution to ask voters to amend the Alaska Constitution to require would-be attorneys general to run for office on non-partisan primary and general-election ballots.

Uehling contends electing the attorney general would provide greater autonomy, freedom from political manipulation, and greater personal responsibility for the attorney general.

In a number of cases attorneys general have approved the wording on ballot propositions. After the voters have expressed their wishes on such ballot measures contrary to the wishes of the governor, they have been challenged as illegal or unconstitutional and thrown out. Examples are the call for a constitutional convention, the Beirne homestead initiative, and the recent Tundra Rebellion ballot proposition. On two big issues which faced the state, residency and local hire, state attorneys general have been dead wrong. Their cases have been overturned by the U.S. Supreme Court. Attorneys general have approved such horrible state contracts as the ill-fated Alpetco contract. And the list goes on and on.

But most disturbing regarding our appointive attorney general is a paragraph in a speech which Governor Sheffield gave to the State boards of Fish and Game recently in regard to their mission on the controversial subsistence issue.

Said the governor: "Your actions will be guided by the policies set by my office. You will be aided in that by the Attorney General's office, which will identify the legal avenues available for furthering those policies. The Attorney General's Office also will outline the scope of your authority, and will alert you if you are exceeding it. The opinions of the Attorney General are binding on all State agencies; actions which run counter to those opinions will not be defended by the State, and may expose you to personal liability." From this it appears that the power and influence of the attorney general, in much greater degree than previously, now extends not just to the Department of Law but to every nook and cranny of state government.

The Fish and Game Boards have been struggling with the subsistence issue since 1978. The problem has not been in the regulations but in the law which is claimed by many to be unconstitutional. There is little likelihood that the new boards are going to be able to achieve what the old Fish and Game boards were unable to do. The new boards may put a bandaid on the issue but it won't be solved until the problem of the law itself is properly addressed. The governor apparently doesn't want to look at the law and the attorney general, therefore, won't look at it. And the attorney general appears to be a tool of the governor in stifling dissent. This was also illustrated this week in the Supreme Court decision in the Joe Vogler case. The high court ruled, contrary to the argument by the attorney general, that there was no compelling state interest in favoring the two major political parties by putting unreasonable restrictions on small, upcoming political parties.

Yes, the time is long passed when Alaska can afford to continue with appointed attorneys general misused by our governors. It's time for Alaska to join the 44 other states in insisting that our attorney general answer primarily to the people, not the governor.

Editorials

The people's attorney

IF YOU LOOK on the bright side, the prospect appears strong that the otherwise downbeat impeachment hearings now under way in Juneau will produce some positive results in relatively quick order.

One of the first things out of the box very likely will be action in the legislature next year to bring about the election of Alaska's attorney general — a post the governor now fills by appointment.

It's a constitutional amendment long overdue. In the 26 years since statehood was won, there have been many instances when the appointed attorney general system has failed to serve the people of Alaska. As the years went on, the attorney general has become virtually the private legal advisor to the governor who appointed him.

ON MANY OCCASIONS that presents an impossible conflict for the attorney general.

His boss, the governor, looks to him for a legal opinion, for example, to support some action the administration plans to take. From a public standpoint, there might be stronger arguments to be made on the other side of the issue. But the attorney general, beholden to the governor for his job, can be expected to deliver an opinion that might well have some legal basis but is not in the best interests of the state as a whole.

The move toward an elected attorney general has long been advocated in these columns. In fact, it may have been here that the campaign to get this modification to the constitution actually began a number of years ago.

SO WE HAIL the word from Senate President Don Bennett of Fairbanks that he has changed his mind on the elected attorney general concept and now wholeheartedly supports it. Said the senator:

"I used to think an appointed attorney general gave the executive branch better control and a better management tool. But I've changed my opinion over the past few months. I think we should have an attorney general who represents the people rather than somebody who represents the governor."

Editoria

Fox in the hen house

BUREAUCRATS AND politicians sometimes are successful in killing proposed legislation they don't like by attaching exorbitant fiscal notes to them.

It has come to our attention that the Department of Law, headed by the appointed attorney general, is using this tactic as a way to try to kill a Senate resolution calling for an elected attorney general.

The department has issued an analysis of the resolution, which, if approved by the legislature, would ask voters to decide if the constitution should be amended to mandate the selection of an attorney general at the ballot box.

The analysis says that the the change would cost the state more than $2.5 million a year.

It also details the many complexities of operating a voter-elected attorney general's office, right down to the amount of square footage that would be required for such an office and the cost per square foot.

THE VIEWS of the department aren't surprising. Traditionally, the attorney general, who is the department's top official, has opposed any changes in the current system, which makes the attorney general an appointee of the governor.

The governor is against the idea of an elected attorney general because it would eliminate his control of the state's top legal officer. Currently, with the governor as the A.G.'s boss, the governor generally gets legal opinions that support his positions. It's a cozy arrangement that serves the governor well, but it certainly doesn't serve the people of Alaska well.

The drawbacks of this arrangement are clearly apparent in the composition and content of the analysis of the pending legislation. It totally supports the governor's position. What else could be expected?

Thus, when the department says that an elected attorney general would cost the state more than $2.5 million annually, the information can be taken with a grain of salt.

TO HIS (or her) credit, the writer of this piece of propaganda has illuminated some of the problems that would have to be overcome in setting up an office for an independent attorney general. It won't be simple. Whoever held the office first would have to create it from the ground up (including the purchase of filing cabinets and installation of telephones).

And ways would have to be devised to do the purchasing of equipment and furniture and the hiring of personnel so that the functions wouldn't infringe on the independence of the office.

Moreover, there's a good chance a whole new bureaucracy would emerge in the form of a group of legal types hired to give in-house counsel. The Department of Law estimates this would cost the state as much as $1.5 million annually within just a few years.

There are many in Alaska who view such costs — both in dollars and extra effort — worthwhile. They should be given a chance to say so in the voting booth.

EDITORIAL PAGE

The Anchorage Times

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Executive Editor

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Another good reason

ONE WAY for Alaska to avoid having legislative lawyers sue administration lawyers is to elect an attorney general who is beholden to neither.

Add that to a long list of reasons to make the attorney general one of the very limited number of elected officials in the State of Alaska. As a matter of fact, there are only two — the governor and the lieutenant governor. Commissioners who head the various administrative departments are appointed by the governor.

This extremely restricted opportunity for the people to elect the public officials who presumably serve them is a unique provision of the Alaska Constitution. It was deliberately adopted, for the reason that those who were here at the time the new state was created wanted a powerful chief executive.

They wanted leadership and accountability. When it came to steering this new ship of state, those Alaskans back in the middle '50s wanted a single captain on the bridge.

IT WAS a good idea. There was need for a powerful hand at the helm of a state with little income, a small population and a million needs. The governor had marching orders to assemble a team and get the show on the road — with the concurrence, of course, of the legislative branch.

It had a fine beginning. For the most part, the executive and legislative branches worked in concert toward a common goal during years of economic struggle.

But not even the visionary constitutional delegates, and the voters who applauded their work in those dimming last days of the territory, could have perceived the day when Alaska would be rolling in money and a single field could produce a trillion dollars worth of oil.

The coming of that wealth produced a Mount St. Helens eruption in the Juneau bureaucracy. Not only did executive agencies swell in size and number, the legislature ballooned as well. It added offices and staffs and interim agencies and even went so far as to hire its own legal counsel, separate from the attorney general's office.

OVER THE YEARS, the attorney general became more the lawyer of the governor than of the state government as a whole. That produced an adversary situation with the legislators who often wanted a different legal opinion than they could expect from the Department of Law.

Their answer was to hire lawyers who would provide opinions supporting the legislature's interests. The result is that public funds are used to finance one set of state lawyers doing battle with another set.

An independent attorney general's office, headed by an elected chief not beholden either to the governor or the legislature, could provide both with unbiased and unfettered legal guidance. The people, as well as state officials, would be better served.

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Page A-10 Thursday, July 2, 1981

Memo to politicians

STATE OFFICIALS who depend on votes of Alaskans for their public offices would be wise to arrange for the attorney general to be elected. A statewide poll by Dittman shows that public support is overwhelming.

In response to the simple question "Should the attorney general be elected?" 61 percent responded affirmatively and 27 percent preferred appointment.

That was the quick reaction from Alaskans scattered far and wide. The idea of electing that important official was favored by 73 percent of those in rural areas, 63 percent in Central Alaska (Fairbanks), 56 percent in Southcentral, 67 percent in Anchorage.

Only in Southeast Alaska was the response different. There it was 41 percent for appointment and 42 percent for election.

A SECOND QUESTION put to the same respondents built up still more the case in favor of the elective process.

It cited some of the powers that go with the office of attorney general. Upon hearing them, the respondents were 71 percent for and only 21 percent against.

That question put it this way: "If you knew that the attorney general of Alaska, who is appointed, also appoints all state prosecutors and district attorneys throughout the state, would you support having the attorney general remain an appointed position or would you support the attorney general becoming an elected position?"

Those favoring election gained 10 points while those for appointment lost 6 points.

TWO MESSAGES are handed to the politicians in that poll. The first is that a substantial majority of Alaskans want their attorney general elected, not appointed. The second is that the proposal gains strength when Alaskans are reminded of the power that lies in the office.

A politician can readily see the significance. He is disappointing his constituents if he ignores the proposal and he may discover his reelection in jeopardy if the day comes when a candidate campaigns against him on that issue.

In rural areas the final lineup was 85 percent for election. In Central Alaska 75 percent. In Southcentral 71 percent and in Anchorage 74 percent. Even in Southeast Alaska many voters changed their minds on the second question. The final tally there was 54 percent for election and only 34 percent for appointment.

No matter how you cut it

THE UNIVERSAL preference of the majority of Alaskans for electing the state's attorney general was pointed up in many different ways in a Dittman poll that showed 71 percent in support and only 21 percent opposed.

Dittman reported that the election proposal has overwhelming support in almost every bracket of the population, be it based on age, sex, income, educational attainment, party registration.

AMONG ALASKANS who have registered as Democrats or Republicans, 72 and 73 percent, respectively, favor election. Non-partisans were 69 percent in favor. Alaskans aged 18 to 24 are 77 percent in favor, those 56 and over, 75 percent and those in between range from 68 to 72 percent.

The poll showed 76 percent of the women and 66 percent of the men favor election. Homemakers are 75 percent for it. Private and public sector employees as a whole favor it 71 to 74 percent. Among state employees, however, the idea is not so popular. Yet more than half (56 percent) are for it.

Support of the election proposal declines as family incomes increase but the majority in all categories favor it. In low income groups 77 percent favor it while in higher income households 67 percent do.

Curiously, the idea of electing the attorney general is more popular among those who don't bother to register, and hence probably don't vote, than among those who do. Those not registered showed 73 percent for election while registered voters were 71 percent favorable.

THE RESULTS of that Dittman survey will be engraved on the minds of those who plan political campaigns. And Dittman's final analysis might inspire some of them to get on the bandwagon to amend the constitution so as to give the people the elective power they want.

That analysis was, "Presenting information regarding the attorney general's powers and responsibilities causes a strong shift to the elected option — especially among the 'undecided' respondents. In total, the undecided percentage declines from 12 to 7½ and more than 5 percent of those who favored the current appointed status changed their minds to support the elected provision when it was learned that the attorney general has broad appointive powers of his own."

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Fortunately, there are other legal experts — whose qualifications and public service careers are are least as good as those of Mr. Gross — who feel precisely the opposite. They offered testimony contrary to that of Mr. Gross by satellite communication facilities in a hearing last week before the House Judiciary Committee.

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Those comments make sense for Alaska. And the legislature should take steps to bring this constitutional change to the ballot.

There seems little doubt that the amendment would be approved, if the legislature would only give the people a chance to vote.

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Weak arguments

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The flaws they see in the proposal are worthy of public review.

For one thing, they said, electing such officials would bring the justice system into politics. They would become subject to pressure from members of the public with axes to grind.

For another, they argue, lawyers would run for attorney general and district attorney in hopes of using the positions as stepping stones to higher political office.

BUT THOSE aren't necessarily flaws. On the contrary, it's possible to argue that those prospects would offer an enormous improvement in the way things are done in Alaska.

Take the second objection first. Under the Alaska constitution, only two state government officials are elected statewide — the governor and the lieutenant governor. Everybody else in the system, including the judges, is appointed by the governor or by department heads appointed by him.

The only other elected officials in Alaska are the city or borough mayors, elected locally; 60 members of the legislature, elected in local districts, and the three members of the state's congressional delegation, elected statewide. Not much of a stepladder on which people interested in public service can climb toward higher office.

An elected attorney general naturally would be looked upon as a potential candidate for governor or U.S. senator or congressman. What's wrong with that? It might be a powerful incentive for the one occupying that spot to do an outstanding job.

AS TO THE COMPLAINT that an elected attorney general might be subject to public pressure, again the advantages are compelling.

Why shouldn't the attorney general have to dance on a hot public griddle if the people become alarmed over deficiencies in the administration of justice?

The system as it now exists makes the attorney general the personal lawyer of the governor, his political defender and his legal arm in waging political warfare against the legislature and the public.

So long as he remains protected by the governor's skirts, the attorney general is immune from public pressure. All kinds of policies can be legitimatized, even though they might infuriate wide segments of the public and frustrate the aspirations of the people.

Legal opinions issued by the attorney general bind state agencies. They can be tools of the governor to guide, maneuver, control and stop all kinds of enterprises — economic and otherwise.

An attorney general answering to the public through the political process would have the freedom to respond to public concerns in ways that are not possible now.

The Anchorage Times

Editorial

The better way

AN ELECTED attorney general is in the public interest and a resolution to that effect now making its way through the legislative process should be approved.

The person who holds this important office in state government should be responsible to the people.

At it now stands, the attorney general is appointed by the governor, is a member of the governor's household and the opinions he hands down are reflections of the governor's point of view, not the people's.

THE RECORD SHOWS that attorneys general in the past few years have nearly always fallen in line with the governor's whims. It is a cozy arrangement.

The present governor doesn't want the change. That is understandable. He has said he opposes the idea of an elective attorney general because "if his own views are at crosswinds with the governor's, he could seriously threaten or even thwart the governor's programs."

And the man who currently sits in the attorney general's chair says he doesn't want to alter the system. He says it would diffuse the executive branch's accountability to the public. He also says he thinks that having to run for office would involve collecting campaign funds, opening the way to conflicts of interest.

NEITHER objection overrides the argument that the attorney general should be responsible to the people and not to the governor.

Nor do they address the fact that an elected attorney general can do a lot more toward keeping members of the administration honest.

Forty-three of the 50 states have an elected attorney general. Alaska should become the 44th.

Editorials

What the people want

A PUBLIC OPINION poll has once more revealed that the people of Alaska want to elect the state's attorney general. In the eyes of the legislators, however, the people are like Rodney Dangerfield. They "don't get no respect."

Over and over again, the people have shown their preference for electing that high official. They have told legislators when they come home and ask what's on their constituents' minds. They have shown it consistently in letters to editors, speeches and every other chance they get.

Many candidates have found the elected attorney general issue a good plank for their platforms and have gone on record publicly as in favor. They have used the issue to make themselves attractive to voters.

THIS WEEK David Dittman is telling the results of his polling that showed Alaskans believe 3 to 1 that an elected attorney general would "more likely be fair and impartial" if he is elected instead of appointed by the governor.

That is one more expression that the legislators will probably ignore. The legislature, as a whole, simply can't muster whatever it takes to please the people in that regard.

To make the office elective, the legislature must propose a constitutional amendment. The voters would then be allowed to go on record formally and finally to make it so.

The issue, however, is one the politicians oppose. If the people could elect the attorney general they would have broken the united front of the political establishment in Juneau. The attorney general would become the people's representative instead of the governor's man.

This issue is one that will not go away even though the politicians want it to. They will have to confront it some day and it would be best that they do it soon.

IF THEY DON'T, it will continue to fester until it might lead to drastic action. The issue might be sufficient to build up support for calling a convention to revise the state constitution, an option that comes once each ten years without regard to the whims of politicians.

As it stands today, Alaskans are constantly noting developments that call for an aggressive, impartial and dedicated attorney general to defend the public interest from possible corruption and various shades of malfeasance.

The same Dittman poll that showed the overwhelming popularity of an elective attorney general also showed that 78 per cent of the people believe there has been serious dishonesty in the North Slope scandals. The appointed attorney general made fame by failing to show any concern at all when the scandal came to light.

The day will come when the people of Alaska will refuse to play the role of Rodney Dangerfield.

Anch. Times – Jan. 27, 1986

Up to the voters

THE STATE'S new attorney general, Hal Brown, has kept pretty much a low profile since taking office late last summer — and that's all to his credit. He came on board the governor's ship when it was sailing in troubled waters. By sticking to business and avoiding headlines he has helped the administration reach calmer waters as a re-election campaign nears.

But his special talents and temperament, which clearly were what Gov. Bill Sheffield needed after the turmoil of the August impeachment hearings, should not obscure the basic change needed to make the attorney general less a law clerk to the governor and more a servant of the people.

THAT CHANGE will only come with a constitutional amendment providing for the election of the attorney general. There is now before the legislature a resolution that could bring about this change.

From the legislators' standpoint, it should be no big deal. This is an issue they can pass right on to the voters, simply by approving its placement on the ballot at the next statewide election.

But there are hurdles to clear, not the least of which is an appropriate public hearing.

DEMOCRAT Pat Rodey of Anchorage, chairman of the Senate Judiciary Committee, will take care of that matter on Saturday with a hearing in Anchorage on a resolution sponsored by Republican Sen. Edna DeVries of Palmer to let the people vote on a constitutional amendment.

The message he gets at the hearing should be clear. Let the people decide. If they want an elected attorney general, they should have the right to make this change in government. If they don't, the proposition will fail at the polls.

Fair enough.

Opinion

Rich
Way
Gen

Attorney general election needed

The recent proposals to provide for the election of Alaska's attorney general have drawn praise, curiosity and criticism from voters and politicians.

The post is currently filled by an appointee of the governor. The proposed change in state law would have the attorney general stand for election every four years.

The election proposal seems a worthy one.

Currently the system of appointment is good for the governor and his administration. Governors may appoint people who may share similar political philosophies and views of the state constitition. It is not surprising that many in the Sheffield administration feel the current system is the best one. For their needs, it is.

But does an appointed attorney general best serve the people of the state? Without implying criticism of Attorney General Norman Gorsuch, the answer is no.

An elected attorney general would be more accountable to the people. Like the governor, lieutenant governor and legislators, he should be held to answer to the voters of Alaska. The process of accountability is now shielded by the governor's office.

There are arguments against the plan which claim an election would throw the enforcement of Alaska's laws into the political arena. The attorney general is already a political appointment, a status that leaves it deep in political muck to begin with. Law enforcement, be it in the form of maintaining simple fishing regulations or investigating public officials and white collar crime, already has its political aspect.

That aspect is not likely to change with the election of the attorney general. The actions of the person holding the office would, however, be held up to greater public scrutiny than under the present system of appointment.

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BUT THOSE aren't necessarily flaws. On the contrary, it's possible to argue that those prospects would offer an enormous improvement in the way things are done in Alaska.

Take the second objection first. Under the Alaska constitution, only two state government officials are elected statewide — the governor and the lieutenant governor. Everybody else in the system, including the judges, is appointed by the governor or by department heads appointed by him.

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They wanted leadership and accountability. When it came to steering this new ship of state, those Alaskans back in the middle '50s wanted a single captain on the bridge.

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EDITORIAL PAGE

The Anchorage Times

ROBERT B. ATWOOD
Editor and Publisher

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Associate Editor
And General Manager

FRED DICKEY
Executive Editor

age A-10 Sunday, March 29, 1981

Let the voters decid

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

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

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

For example:

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

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

More damaging? More harmful? More dangerous?

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

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

There are many Alaskans — and we're among them who believe the present s tem of having the attorn general appointed, rather th elected, has proved less th satisfactory.

We don't buy the argum of former Attorney Gene Norm Gorsuch that "le competence and electabl are not necessarily equa The statement is incomple The rest of it is that "le competence and appointa ity are not necessarily equ either."

IT'S QUITE POSSIB that an incompetent law might be elected attorney g eral. But his shortcomi would be readily evident : it's a sure thing that he wo serve only a single term.

It's also quite possible – fact, very likely — that sc extremely capable men women would seek electio the office, were it up to people to decide. An elec attorney general would be or her own person, with hi her reputation on the line. . he or she would be no lac to any governor, or any islature.

There's no doubt that w the office an elected posit it would be used by many stepping stone to higher o — the governorship, for ex ple, or a seat in the U.S. H or U.S. Senate. But wh wrong with that?

Rep. Fred Brown, the I banks Democrat who h the House Judiciary C mittee sponsoring this co tutional change, sees this means of strengthening ernment. So do we. Anc hope he prevails so that matter can be brought to ballot for a vote of the peo

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

August 22, 1985

MEMORANDUM

TO: Representative Terry Martin

FROM: Mark Torgerson MT
Legislative Analyst

RE: Election of Attorney General: Potential Additional Costs
Research Request 86-015

You asked that we investigate whether it costs more to have an elected attorney general or an appointed attorney general. As part of your request, you asked whether two departments of law are needed if the attorney general is elected by popular vote.

We contacted 12 states' attorneys general departments, the Alaska Department of Law and the National Association of Attorneys General.[1] Although they were unable to supply definitive financial figures, they provided the following information.

Summary

All those contacted agreed that the costs of operating an elected or appointed attorney general's department are dependent upon the structure and organization of the department that is established, and not on the nature of the selection process. For example, if the attorney general's department remains within the executive branch of government for administrative purposes--that is, purchasing, accounting, data processing and other administrative functions are performed centrally--the costs of administration should be comparable whether the position is elected or appointed. On the other hand, the establishment of an independent department, responsible for its own administrative functions, could require additional appropriations for administration. Based upon their departments' experiences, officials in other states (including elected and appointed departments) did not anticipate a

[1]The states contacted for this request include Delaware, Idaho, Maryland, Montana, New Hampshire, New Jersey, New Mexico, Pennsylvania, Rhode Island, Virginia, Washington, and Wyoming.

significant increase in Alaska's attorney general's operating costs if Alaska changes to the popular election of the attorney general.

In addition, costs are dependent upon the legal responsibilities of the attorney general's department. For example, the attorneys general departments in four states--Alaska, Delaware, New Jersey, and Rhode Island--handle all civil and criminal prosecutions for violations of state laws. In the other states, attorneys general are responsible for civil litigation only, while independent county or district attorneys prosecute the criminal violations. Because the four states mentioned incur operating costs for criminal prosecutions, their budgets must be adjusted accordingly. In any event, the costs of operating an elected attorney general's department will depend largely upon the responsibilities assigned to the department.

Moreover, officials in other states and counsel for the National Association of Attorneys General said that two separate legal departments are not required if the attorney general is selected by popular vote. The attorney general--whether elected or appointed--is the chief legal adviser of the governor, and--in most states--legal adviser to the executive branch agencies. Although governors in the states contacted often retain one or more lawyers on their personal staff, or are statutorily authorized to hire a "general counsel" for independent legal advice, they rely on their attorney general for formal legal advice. If the governor disagrees with the attorney general on a legal issue, the governor is allowed to hire special counsel to represent him or her on the case. For example, Ron Rogers, Chief of the Division of Legal Counsel for the New Hampshire attorney general, stated that the governor there occasionally disagrees with advice given by the attorney general to an executive branch agency. When this occurs, the governor hires special counsel to represent him, while the attorney general represents the executive agency in the ensuing lawsuit. Mr. Rogers said that on some occasions, the attorney general will represent the governor, and the executive agency will retain special counsel. Although New Hampshire's attorney general is appointed by the state's governor, Mr. Rogers asserted that conflicts of this nature occur in either "elected" or "appointed" states, and that a separate legal department is not necessary to handle these matters.

Susan Hansen, Administrative Officer of the Montana Attorney General's Office, agreed with Mr. Rogers' assessment. In Montana, the attorney general is elected by popular vote. Ms. Hansen stated that although the governor there is authorized to retain one "legal counsel to the governor," the attorney general normally represents the governor on formal legal matters. On those rare occasions when the governor and the attorney general disagree on a legal issue and "go to court" to resolve the dispute, the governor's legal counsel represents the governor.

According to Ms. Hansen, Montana's governor and attorney general have enjoyed a good working relationship despite the fact that the attorney general is elected by popular vote. Officials in the other states contacted--both those with elected and those with appointed attorneys general--provided comparable assessments; significant disputes between the governor and attorney general have been uncommon.

Pennsylvania's Conversion to Popular Election of the Attorney General

Pennsylvania is one of 43 states where the attorney general is elected by popular vote.[2] It is the only state which has recently converted its selection process to the popular vote method, having done so when the state's voters approved an amendment to the constitution in 1978. The structure of Pennsylvania's legal services is unique among the states contacted. When the conversion occurred there, a legal division separate from the attorney general was created. This division, entitled the Office of General Counsel, is managed by an attorney (general counsel) appointed by the governor. The division includes attorneys who represent all executive branch agencies. (Prior to the conversion to the popular election process and the creation of the general counsel division, the agency attorneys were employed by the attorney general. These attorney positions were eliminated from the attorney general's staff after the conversion.) The general counsel and the agencies' attorneys provide initial "in-house" legal advice. However, if legally binding opinions are needed, they must be written by the Attorney General's office. In addition, the attorney general has primary responsibility to conduct all litigation. Nevertheless, the governor may instruct the general counsel to represent the executive branch when deemed necessary. Furthermore, the attorney general may delegate litigation responsibilities when doing so is believed to be in the best interests of the Commonwealth.

In the other states contacted which elect the attorney general, attorneys who represent the executive agencies are usually employed by the attorney general. In some states, such as Washington, the agencies are statutorily prohibited from hiring their own counsel without prior approval of the attorney general. According to Tim Malone of the Washington Attornry General's Office, the need for special counsel for the agencies is rare.

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[2]A breakdown of the selection process in all states is contained in House Research Request 81-91, which is attached to this memorandum.

Fiscal Note to Sentate Journal Resolution (SJR) 9

Attachment A is a fiscal note to SJR 9 "relating to the election of the attorney general." The note, which was prepared by the Alaska Department of Law's Division of Administrative Services, asserts that costs for administrative services could increase to approximately $2.5 million from the current $424,600 for FY 86. However, Richard Pegues, Director of the department's Division of Administrative Services, stated that these figures are "guesstimates" based upon the current language of SJR 9. Mr. Pegues stated that the division determined the note's figures under the assumption that an elected attorney general would be entirely independent of the executive branch and would require additional staff to handle functions now performed by the Office of Management and Budget and other executive branch divisions. Mr. Pegues stated that most of the staff positions represented in the fiscal note currently exist in divisions within the executive branch.

No state we contacted duplicates functions to the extent envisioned in the fiscal notes to SJR 9. Based on the activities of other states, it would be possible to provide for the election of the attorney general while retaining Alaska's current organizational structure, including centralized administrative services. The State could also choose from a number of alternative organizational structures, including the following:

- a structure comparable to that used in Pennsylvania, i.e., establish an office of General Counsel which includes executive agency attorneys who would be transferred from the attorney general's office; the elected attorney general would be responsible for all state litigation unless a conflict arises with the governor, or unless delegated; district attorneys could be elected by the communities or appointed by the attorney general, depending upon the option chosen by each community; or

- a structure which provides for the appointment of the attorney general (by the governor, the legislature or the supreme court) who could serves as counsel to the govenor and who would be responsible for civil litigation while elected state prosecutor would supervise all state criminal matters; district attorneys could be elected locally or be appointed, and could get tenure after working satisfactorily for a stated period.

Although these alternatives have been described superficially, they illustrate the variety of potential options for delivery of legal services in Alaska. According to David DeVries, Chief Deputy Attorney General in Pennsylvania, the change in that state's legal structure has not been a major problem; the crucial event is the legislative drafting of the implementing legislation. Mr. DeVries recommended drafting the legislation prior to the applicable election to increase voter awareness.

Attached with this request is a letter (Attachment B) concerning SJR 9 from Attorney General Gorsuch to Senator Rodey. According to Joe Geldhof of the Attorney General's Office, the Department of Law has no other Alaska studies on this issue.

I hope this information is useful to you. If you need additional information on attorneys general in other states, please contact our agency.

MT

Attachments

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: SJR No. 9

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

Sponsor: Sen. DeVries

Requestor: Office of the Gov./OMB

Date of Request: April 22, 1985

FISCAL DETAIL

Agency Affected: Department of Law

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND					*	*
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME					*	*
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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

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

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

Division: Administrative Services Date: 4/23/85

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

Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

7/1/84

SJR No. 9 4/23/85
Analysis

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

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

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

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

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 33 at $2.00 per sq. ft., per month, plus 2,000 sq. ft. each, for records management and duplication services. Also costed in is $200 per month per employee for contractual services to cover telephone, copying and postage. Ongoing commodities are estimated at $150 per month,

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

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

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

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

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

BILL SHEFFIELD, G

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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

April 22, 1985

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

Re: Elected AG
SJR 9

Dear Senator Rodey:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

Norman C. Gorsuch
Attorney General

NCG:vrb

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

March 27, 1981

MEMORANDUM

TO: Representative Fred Brown, Chairman
House Judiciary Committee

ATTN: Pete Froehlich

FROM: Deb Pomeroy DCP

RE: Election or Appointment of Attorneys General in Other States
Research Request 81-91

You asked the we provide a breakdown of the 50 states showing which states elected their attorneys general, and which states appointed them.

According to the 1980-81 edition of Book of States (see attached table), 40 states have a constitutional provision requiring the public election of the attorney general. These states are listed below:

Alabama	Illinois	Missouri	Pennsylvania
Arizona	Iowa	Montana	Rhode Island
Arkansas	Kansas	Nebraska	South Carolina
California	Kentucky	Nevada	South Dakota
Colorado	Louisianna	New Mexico	Texas
Connecticut	Maryland	New York	Utah
Delaware	Massachusetts	North Carolina	Virginia
Florida	Michigan	North Dakota	Washington
Georgia	Minnesota	Ohio	West Virginia
Idaho	Mississippi	Oklahoma	Wisconsin

of these States what procedures were used to change from the constitution

Three states, Indiana, Oregon and Vermont, have a statutory requirement that the attorney general be elected by the public.

Of the states that have appointed attorneys general, Hawaii, Wyoming and New Jersey require Senate approval of the Governor's appointment; New Hampshire requires Council approval; and, Alaska requires approval by both the House of Representatives and Senate.

The remaining two states have a different requirement than public election or appointment by the Governor: Maine has a constitutional provision that the attorney general be elected by the legislature; and Tennessee requires, by statute, that the attorney general be elected by the state Supreme Court.

dp

Attachment

Table 18
STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION*

State or other jurisdiction	Governor	Lieutenant Governor	Secretary of state	Attorney General	Treasurer	Adjutant general	Administration	Agriculture	Banking	Budget	Civil rights	Comptroller	Community affairs	Consumer affairs	Corrections	Data processing
Alabama	CE	CE	CE	CE	CE	G	...	CE	G	GS	...	...	...	(a-1)	B	CS
Alaska	CE	CE	(a-3)	GB	G	GB	A	A	A	A	G	GB	GB	A	A	A
Arizona	CE	...	CE	CE	CE	G	GS	B	GS	L	G	G	...	A	GS	AG
Arkansas	CE	CE	CE	CE	CE	G	(b)	(a-9)	AG	AG	G	GS	G	(a-1)	GS	GS
California	CE	CE	CE	CE	CE	GS	(b)	G	GS	GS	...	G	GS	G	GS	G
Colorado	CE	CE	CE	CE	CE	G	GS	GS	A	(a-6)	A	A	...	(a-1)	GS	(a-7)
Connecticut	CE	CE	CE	CE	CE	G	GE	GE	GB	A	B	GE	(a-9)	GE	GE	A
Delaware	CE	CE	GS	CE	CE	GS	AD	GS	GS	GS	GS	AG	GS	AG	GS	A
Florida	CE	CE	CE	CE	CE	GS	GS	CE	CE	A	...	GS	GS	GC	GS	A
Georgia	CE	CE	CE	CE	...	G	GS	CE	GS	G	...	B	B	G	B	(a-7)
Hawaii	CE	CE	(a-3)	GS	...	GS	...	GS	(g)	GS	...	(a-4)	...	GS	(a-2)	CS
Idaho	CE	CE	CE	CE	CE	G	GS	GS	GS	G	B	G	(a-16)	(a-1)	B	(a-22)
Illinois	CE	CE	CE	CE	CE	G	GS	GS	(g)	G	(a-1)	GS	GS	(a-1)	GS	(a-7)
Indiana	CE	CE	CE	SE	CE	G	G	(a-3)	G	G	G	(a-3)	...	G	G	A
Iowa	CE	CE	CE	CE	CE	GS	...	SE	GS	L	GS	GS	(a-4)	(a-1)	GB	CS
Kansas	CE	CE	CE	CE	SE	GS	GS	B	GS	L	B	GS	...	A	GS	A
Kentucky	CE	CE	CE	CE	CE	G	G	CE	G	AG	B	G	G	A	AG	AG
Louisiana	CE	CE	CE	CE	CE	GS	G	CE	GS	L	...	GS	GS	GS	GS	A
Maine	CE	...	CL	CL	CL	G	GLS	GLS	ALS	AG	B	(a-23)	G	ALS	AG	CS
Maryland	CE	CE	GS	CE	CL	GS	...	GS	AGS	GS	G	A	AG	A	AGS	...
Massachusetts	CE	CE	CE	CE	CE	G	G	G	G	AG	A	A	G	G	G	A
Michigan	CE	CE	CE	CE	GS	G	GS	B	GS	L	B	GS	...	A	B	CS
Minnesota	CE	CE	CE	CE	CE	G	GS	GS	BS	GS	GS	(a)	GS	GS	GS	A
Mississippi	CE	CE	CE	CE	CE	G	...	SE	G	B	...	(a-24)	B	A	B	B
Missouri	CE	CE	CE	CE	CE	GS	GS	GS	AS	A	B	B	(a-9)	(b)	A	A
Montana	CE	CE	CE	CE	A	G	GS	GS	G	G	G	G	GS	G	A	A
Nebraska	CE	CE	CE	CE	CE	G	GS	GS	GS	A	B	GS	G	A	GS	A
Nevada	CE	CE	CE	CE	CE	G	G	B	A	(a-7)	G	G	G(c)	A	B	A
New Hampshire	CE	...	CL	GC	CL	GC	GC	GC	GC	(a-7)	B	GOC	GOC	(a-1)	GOC	B
New Jersey	CE	...	GS	GS	GS	GS	...	BG	GS	GS	A	A	GS	GS	GS	A
New Mexico	CE	CE	CE	CE	CE	GS	GS	(b)	GS	G	G	GS	AG	(a-1)	A	(b)
New York	CE	CE	GS	CE	(j)	G	...	GS	G	G	G	GS	GS	GS	GS	GS
North Carolina	CE	CE	CE	CE	CE	G	G	CE	BG	AG	G	G	A	A	G	AG
North Dakota	CE	CE	CE	CE	CE	G	(g)	CE	GS	A	...	G	A	A	GS	A
Ohio	CE	CE	CE	CE	CE	G	GS	GS	A	GS	GS	GS	GS	A	GS	A
Oklahoma	CE	CE	GS	CE	CE	GS	...	GS	GS	G	B	G	G	B	B	A
Oregon	CE	...	CE	SE	CE	G	GS	GS	AG	A	CS	GS	A	A	AG	A
Pennsylvania	CE	CE	GS	CE	CE	GS	G	GS	GS	G	GS	GS	GS	A	A	G
Rhode Island	CE	CE	CE	CE	CE	G	GS	GS	G	GS	B	GS	GS	BS	G	A
South Carolina	CE	CE	CE	CE	CE	CE	(a-16)	SE	B	B	B	GS	A	B	B	B
South Dakota	CE	CE	CE	CE	CE	GS	G	GS	A	G	GS	GS	CS	(a-1)	AG	A
Tennessee	CE	(o)	CL	SC	CL	G	G	G	G	A	B	G	(a-9)	A	G	A
Texas	CE	CE	GS	CE	CE	GS	...	SE	B	G	...	B	GS	A	B	A
Utah	CE	SE(k)	GE(k)	CE	CE	G	...	GS	GS	GS	...	GS	...	A	BA	GS
Vermont	CE	CE	CE	SE	CE	SL	GS	GS	GS	GS	(a-1)	A	GS	(a-1)	GS	CS
Virginia	CE	CE	GB	CE	GB	GB	GB	GB	B	GB	...	GB	A	(a-24)	GB	GB
Washington	CE	CE	CE	CE	CE	G	GS	GS	A	GS	B	GS	(a-6)	(a-1)	A	B
West Virginia	CE	...	CE	CE	CE	GS	GS	CE	GS	A	GS	GS	A	(a-1)	GS	A
Wisconsin	CE	CE	CE	CE	CE	G	GS	B	GS	CS	A	(d)	GS	(b)	A	CS
Wyoming	CE	...	CE	GS	CE	G	G	B	G	G	...	...	A	A	BG	A
Guam	CE	CE	...	GS	A	...	GS	GS	A	GS	...	GS	G	A	GS	G
Puerto Rico	CE	...	GB	GS	GS	GS	...	GS	(a-17)	G	G	G	A	GS	GS	...

*Salary information for the officials listed in this table can be found in Table 17.

Legend:

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

	Appointed by	Approved by
G	—Governor	...
...	—Governor	Senate
...	—Governor	Both houses
...	—Governor	Either house
...	—Governor	Council
...	—Governor	Departmental board
...	—Governor	Appropriate legislative committee and senate

	Appointed by	Approved by
GOC	—Governor and council or cabinet	...
LG	—Lieutenant governor	...
AT	—Attorney general	...
A	—Agency head	...
AB	—Agency head	Board
AG	—Agency head	Governor
AGC	—Agency head	Governor and council
AS	—Agency head	Senate
ALS	—Agency head	Appropriate legislative committee and senate
AGS	—Agency head	Governor and senate
ASH	—Agency head	Senate president and house speaker
B	—Board or commission	...
BG	—Board	Governor
BGC	—Board	Governor and council
BS	—Board and commission	Senate

HOUSE ROLL CALL

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SUBJECT:

	Yea	Nay	Absent
ABOOD		1	
ADAMS	OK	2	
BARNES		3	
BETTISWORTH		4	
BUSSELL		5	
CATO		6	
CLOCKSIN			
COWDERY	OK	7	
DAVIS			
DUNCAN			
FLOOD	OK	8	
FRITZ	OK	9	
FULLER	OK	10	
FURNACE		11	
GOLL			
GRUSSENDORF			
HERRMANN		12	
HURLBERT	OK	13	
KOPONEN			
LACHER		14	
LARSON			
LINDAUER		15	
LISKA		16	
MALONE			
MARTIN		26	
MCBRIDE			
MILLER (D)			
MILLER (R)		25	
PESTINGER		17	
PHILLIPS			
RINGSTAD	OK	18	
SHULTZ		19	
SZYMANSKI	OK	20	
TISCHER		21	
UEHLING		22	
VASKA			
WARD		23	
WENDTE			
ZHAROFF			
*HAYES		24	

MEMORANDUM

TO: Representative Rick Uehling
FROM: Bill Lovell, Staff
DATE: March 21, 1983
RE: CSSSHJR 7

On Wednesday, March 16, 1983, Committee Substitute for Sponsor Substitute for House Joint Resolution 7 (Judiciary) was considered by the House. By a vote of 27 to 12, the resolution passed.

Those voting in favor of the resolution were Abood, Adams, Barnes, Bettisworth, Bussell, Cato, Cowdery, Flood, Fritz, Fuller, Furnace, Goll, Hayes, Herrmann, Hurlbert, Lacher, Larson, Lindauer, Liska, Martin, M.W. Miller, Pestinger, Ringstad, Shultz, Tischer, Uehling, Ward.

Those voting against the resolution were Clocksin, Davis, Duncan, Grussendorf, Koponen, Malone, McBride, M.M. Miller, Phillips, Vaska, Wendte, Zharoff.

Represesntative Szymanski was excused from the House.

Representative Clocksin served notice of reconsideration of his vote.

CSSSHJR 7(Jud)

CSSSHJR 7(Jud) was again before the House.

Representative Barnes moved and asked unanimous consent that CSSSHJR 7(Jud) be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered.

CSSSHJR 7(Jud) was read the third time.

The question being: "Shall CSSSHJR 7(Jud) pass the House?" The roll was taken with the following result:

CSSSHJR 7(JUD)

Yeas:	27	~~Abood~~, Adams, ~~Barnes~~, ~~Bettisworth~~, ~~Bussell~~, ~~Gato~~, Cowdery, Flood, Fritz, Fuller, ~~Funsse~~, Goll, ~~Hayes~~, ~~Herman~~, Hurlbert, ~~Lacher~~, Larson, ~~Lindsey~~, ~~Lloyd~~, Martin, Miller,M.W., ~~Pessinger~~, Ringstad, ~~Shultz~~, ~~Tiesher~~, ~~Uehling~~, Ward
Nays:	12	Clocksin, Davis, Duncan, Grussendorf, Koponen, Malone, McBride, Miller,M.M., Phillips, Vaska, Wendte, Zharoff
Excused:	1	Szymanski
Absent:	0	

And so, CSSSHJR 7(Jud) passed the House.

Representative Clocksin served notice of reconsideration of his vote on CSSSHJR 7(Jud).

Table 19

STATE ADMINISTRATIVE OFFICIALS: METHODS OF SELECTION

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

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

Key:

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

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

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

STATEMENT BY REPRESENTATIVE RICK UEHLING ON BEHALF OF
HOUSE JOINT RESOLUTION SEVEN

I thank you, Mr. Chairman and members of the committee, for this opportunity to voice my reasons for introducing House Joint Resolution Seven, proposing amendments to the Constitution of the State of Alaska relating to the election of the attorney general.

The idea behind HJR 7, that of electing Alaska's attorney general, is not an original concept. For years, many Alaskans have supported the principle of electing our state's highest law enforcement officer. The past five years have seen similar legislation introduced by Senator Brad Bradley, Representative Terry Martin, and Majority Leader Ramona Barnes. As early as the Constitutional Convention in 1956, when Frank Barr of Fairbanks introduced an amendment to require the election of the AG, many citizens have recognized the need for a truly impartial and independent attorney general. Many believe, as Mr. Barr expressed the ideal, "the attorney general should be 'the people's attorney,' elected by and responsible to the citizens of Alaska."

Since our Constitutional Convention rejected Barr's suggestion, many of the states have provided for the election of attorneys general. In fact, today all but five of the fifty states elect their AG, a dramatic reversal from 1956 when only a dozen states elected attorneys general. Even the most avid opponent of electing the attorney general would have to admit that the last fifteen years have clearly indicated overwhelming national sympathy for the idea.

Today, my arguments in favor of HJR Seven will concentrate on three main points: 1. election provides for greater autonomy for the AG's office; 2. election provides for freedom from political manipulation; and 3. election provides for greater personal responsibility by the attorney general.

Today the attorney general is defined in AS 44.23.020 as "the legal advisor of the governor and other state officers." By very definition, the actions of the AG are subject to the whims of the governor. Providing for the election of future attorneys general will free the state's legal arm to exercise more autonomous control over prosecutorial and other activities. As an elected official, the AG would respond directly to the public. To quote former New York Attorney General Louis J.

Lefkowitz in his classic defense of elected attorneys general:

> The elected attorney general has a natural and impelling desire to be creative and to exercise broader initiative in the service of the public. He is free of the fear of dismissal by any superior official if he should exercise contrary independent judgement. He is in the best position to render maximum service to the people and impartial advice to the Governor, the Legislature, and State departments and agencies.

My second argument in favor of HJR Seven is to the effect that, if elective, the office of attorney general will be free from political manipulation by the governor's office. As our system is arranged now, the attorney general is just another cabinet officer, directly responsible to the governor. Although I will certainly not argue that any of the fine men who have served in the office of attorney general have been politically manipulated, I will eagerly point out that the potential does exist. As our law is written today, the attorney general is the servant of the governor: he makes prosecutions as the governor sees fit and he generally interprets the law as the governor directs. This arrangement is obviously dangerous. Requiring the election of the attorney general would help eliminate this danger. Former Illinois Attorney General William J. Scott made this point clearly when he argued, "the Attorney General's roles of 'government watchdog' and 'attorney for the people' require independence from the governor." Former Attorney General Lefkowitz argued the same point when he said that electing the state's AG provides that "he can appear in Court without fear or favor--an attorney in the fullest and finest sense of the word."

My third observation is that election would provide a sense of personal responsibility for the attorney general. As an official directly responsible to the electorate, an elected attorney general would naturally feel a personal responsibility for the activities of the department. Perhaps more than any other reason, this argument hits the real point of electing Alaska's attorney general. That is in fact the main purpose in electing almost any official, be it our governor, our judges, or our mayors. When the direct authority and responsibility inherent to a particular position become so unusually varied and important, it is prudent to make that official directly answerable to the people he serves. Going again to General Lefkowitz: "To sum it up--an elected

attorney general has a measure of independence and a sense of personal and direct responsibility to the public."

Ladies and gentlemen, I will not tell you that there are no problems with the election of Alaska's attorney general or of any state official, for that matter: elections cost money; politics is inevitably involved, even in a non-partisan election as in this bill; personal greed and ambition are simply impossible to eliminate; and effective governments do require strong executives. However, I am willing to tell you that the potential benefits of an elected attorney general are far more numerous and important than any costs, real or imagined. The arguments I have made today hopefully demonstrate that point.

In my opinion, the argument is simply this: does the attorney general represent the governor of Alaska or the thousands of men and women who make up this great state? If you believe like I do that the attorney general should represent all of Alaska's citizens, then I encourage you to support this resolution to make that official directly responsible to the people represented. I encourage you to vote "Do Pass" on this important issue.

Thank you.

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

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

A BILL ENACTED BY THE PEOPLE OF THE STATE OF ALASKA
UNDER THEIR AUTHORITY GRANTED BY

THE CONSTITUTION ART. I SEC. 2

"All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole."

AND THE CONSTITUTION ART. 1 SEC. 5

"Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right." (emphasis added)

AND THE CONSTITUTION ART. 1 SEC. 6

"The right of the people peaceably to assemble and to petition the government shall never be abridged."

This is an advisory vote and a plebiscite - an expression of the people's will by direct ballot on a political issue.

A BILL

"An Act relating to the election of the Attorney General of the State of Alaska.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ALASKA:

Article III, sec. 29. is amended by adding a new section to read:

(a) ELECTION OF THE ATTORNEY GENERAL. The attorney general shall be chosen by the qualified voters of the State on nonpartisan ballots. Candidates for attorney general shall file for the office as prescribed by law. The candidates receiving the greatest and the second greatest number of votes on a nonpartisan ballot at the primary election shall be candidates in the general election. The candidate receiving the greatest number of votes on a nonpartisan ballot at the general election shall be attorney general.

(b) This Act is effective for primary and general election of 1986.

Inside a rare debate

Attorney general bill voted down

By JOHN LINDBACK
Daily News reporter

JUNEAU — It was an extraordinary day in the Alaska State Senate.

First, a bill that would ask voters to decide if Alaskans should elect their attorney general failed by a 9-11 vote on the Senate floor.

Rejection of a bill by a floor vote is uncommon. Sponsors usually make sure they've garnered enough support before they ask for a floor vote.

In addition, senators debated the bill for 45 minutes. Floor debate in the Senate, where battles are usually fought in closed-door caucuses or committees, is as rare as sunburn in Barrow.

The Senate's anomaly — which included flurries of note-passing and occasional laughter — progressed like this:

11:30 a.m. — The words "Senate Joint Resolution 9," a bill proposing amendments to the Constitution relating to the election of the attorney general, are typed onto the Senate's electronic vote board.

11:31 a.m. — Sen. Vic Fischer, D-Anchorage and a delegate to the 1955 Alaska Constitutional Convention, proposes an amendment that would repeal the part of the Constitution that says the executive power of the state is vested in the governor. It might as well be repealed if the bill is passed, Fischer said, because an elected attorney general would lead to friction in state government and a fundamental change in the way framers of the Constitution structured the executive branch.

11:35 a.m. — The Senate defeats Fischer's amendment 16-4. Among those joining Fischer on the losing end of the vote was Sen. Jack Coghill, R-Nenana, the only other senator who was a delegate to

See Page B-3, SENATE

SENATE: Attorney general bill voted down

Continued from Page B-1

the Constitutional Convention.

11:36 a.m. — Senate Majority Leader Rick Halford and Sen. Jay Kerttula propose an amendment that states an attorney general is not eligible to hold office as governor or lieutenant governor until four years after leaving office as attorney general. The amendment might allay fears of some critics who contend an ambitious elected attorney general would politicize the job in hopes of later becoming governor, Kerttula said.

11:39 a.m. — Senate Minority Leader Bill Ray, D-Juneau, said the amendment makes a "silk purse out of a sow." It passes on a 15-5 vote.

11:40 a.m. — Senate President Don Bennett calls for general debate on the full bill.

11:41 a.m. — Sen. Joe Josephson, D-Anchorage, cites excerpts from Alexander Hamilton's Federalist Papers and argues that an elected attorney general would devote time to a political career in addition to serving as the state's chief lawyer. Elected attorneys general are not immune from corruption, Josephson said, citing the recent indictment of the West Virginia attorney general. The name of the West Virginia attorney general, Charlie Brown, draws giggles from the chambers. In addition, the governor will have to hire his own lawyer if he considers the attorney general a political rival, he said.

11:50 a.m. — Sen. Bob Ziegler, D-Ketchikan, asks proponents of the bill to "tell us why it's a good idea."

11:50 a.m. — Prime sponsor Sen. Edna DeVries, R-Palmer, said an attorney general appointed by the governor is more responsive to the governor than the general public. Alaska should join the trend and join the 43 other states who elect their attorney general, she said.

11:52 a.m. — Kerttula says the Alaska Constitution purposefully sets up a strong executive branch. That may not be true in other states.

11:59 a.m. — Sen. Pat Rodey said Alexander Hamilton would have supported electing the attorney general. It provides more checks and balances in government, a fundamental principle cited in the Federalist Papers, Rodey said.

12:04 p.m. — People should pay attention to the historical perspective and general agreement on the issue by Fischer and Coghill, Kerttula said. Normally, "neither one of them agree on much of anything," he said.

12:09 p.m. — Sen. Arliss Sturgulewski saluted the debate on the bill and concurred with Rodey. The public sometimes has a reason to wonder whether the attorney general is "their lawyer or the governor's lawyer," she said.

12:10 p.m. — Quoting from Fischer's book about the Constitutional Convention, DeVries said some delegates wanted an elected attorney general "to keep the executive honest."

12:12 p.m. — Fischer said it was flattering to be quoted as authority on the state Constitution. DeVries, smiling, turns to Sen. Mitch Abood, R-Anchorage, and loudly whispers, "I didn't say he was an authority." An elected attorney general would automatically aspire to be governor, Fischer said.

12:14 p.m. — Several members of the Senate yell "Question!" The practice warns the President that those yelling want to vote.

12:15 p.m. — Bennett explains that since the resolution calls for an amendment to the Constitution to be placed before voters, the rules require at least 14 votes for passage.

12:15 p.m. — The bill fails 9-11.

12:16 p.m. — Sen te Rules Committee Chairman Tim Kelly asks that sponsors of the bill be allowed to return it to his committee and resubmit it for another floor vote when they feel they have 14 votes. Nobody objects.

After the floor session, DeVries said she knew the bill would lose. But polls show 80 percent of the state's voters favor electing the attorney general and the people deserve a debate on the subject, she said.

She's hopeful, she said, that citizens will put pressure on senators who voted no to change their minds on the subject. Then she could bring the bill back to the floor, she said.

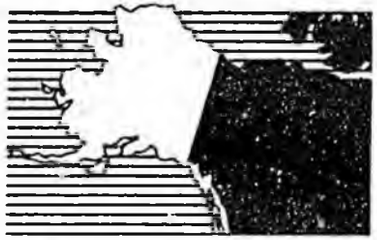
"Let the people now come forth. The ball is back in their court," DeVries said.

Voting in favor of putting a constitutional amendment before the voters were: Abood; Bennett; DeVries; Halford; Kelly; Rodey; Sturgulewski; Jan Faiks, R-Anchorage, and Paul Fischer, R-Soldotna.

Voting against the measure were: Coghill; Fischer of Anchorage; Josephson; Kerttula; Ray; Ziegler; Dick Eliason, R-Sitka; Bettye Fahrenkamp, D-Fairbanks; Frank Ferguson, D-Kotzebue; John Sackett, R-Ruby and Fred Zharoff, D-Kodiak.

ia monocytogenes, and they can cause fatal illness in pregnant women, small children and frail elderly people, the agency said. In healthy adults, the bacteria can produce flu-like symptoms.

The DEC did not identify the brand of brie cheese found to be contaminated. Officials said that to be safe, Alaskans should avoid all brie that was made in France.



White House gets conveyance bill

Our Washington bureau

WASHINGTON — The Senate this week passed and sent to the White House a bill to extend for one year the time period for the state to file legal challenges against the conveyance of submerged land to Alaska Natives.

The bill cleared the Senate by unanimous consent and is expected to be signed by President Reagan.

The Alaska Lands Act of 1980 set a five-year statute of limitations on court challenges to the conveyance of submerged lands. But the state and the Natives sought a one-year extension of the deadline, while they continue negotiations on a comprehensive settlement to the problem.

Sen. Frank Murkowski, R-Alaska, said the bill is needed "to avoid numerous and needless lawsuits between the state and the Natives."

Introduced: 1/29/85
Referred: Judiciary

IN THE SENATE

BY DEVRIES, ABOOD, FAIKS AND RODEY

SENATE JOINT RESOLUTION NO. 9

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

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

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

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

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

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

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

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

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

SECTION 31. VACANCY. In case of a vacancy in the office of attorney general for any reason, a successor shall be elected for the remainder of the unexpired term at the first general election occurring not less than six months after the office becomes vacant. The governor may appoint a qualified person to fill the office between the date it becomes vacant and the date it is filled by election.

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

SECTION 33. DUTIES. The attorney general shall be the legal adviser of the state officers, and shall perform other duties prescribed by law.

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

* Sec. 5. The amendments proposed by this resolution shall be placed

before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

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

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

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

Attorney General

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

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

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

However, by votes of twelve to forty and eighteen to thirty-six, delegates rejected the proposals for treating the attorney general differently from other heads of principal departments.[69] The argument against electing the attorney general, founded primarily on the belief in a strong chief executive, was summed up by George McLaughlin, himself a lawyer:

> If we yield 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 . . . 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 . . . Any recommendation he makes, if acted upon, can always be attacked in the courts by private citizens. His opinion is . . . 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 . . . His functions are not quasi-judicial. He is another attorney giving an opinion . . . I think if we are going to have an attorney general, the power should be vested in the governor to appoint him without any screening by a judicial council or anything of the sort . . . (The) 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 personal selection.[70]

Executive Departments

The Committee on the Executive proposed that all executive and administrative functions be allocated among a maximum of twenty departments, all under supervision of the governor. There was little disagreement with this recommendation. The problems arose on the question of how each department was to be headed: by a single department head or by a governing board or commission that could in turn designate a departmental executive.

The committee's guiding principle was that single department heads would, in chairman Victor Rivers' words, " . . . help effectuate and make more efficient the strong executive type of government in the executive branch."[71] Delegates saw the state constitution as a means of eliminating and avoiding the proliferation of boards and commissions that had characterized territorial government. While they deemed it necessary then to provide Alaskans at least some

[69] *Ibid.*, pp. 2193-2200, 2215, 2226.
[70] *Ibid.*, p. 2196.
[71] *Ibid.*, p. 2034.

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[72] *Ibid.*, pp. 2245-52.
[73] *Ibid.*, p. 2249.
[74] *Ibid.*, pp. 2048-53, 2062
[75] *Ibid.*, pp. 2053-58, 2151

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. (1)

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. (2)

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. (3)

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. (4)

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

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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. [5]

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. [6]

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. [7]

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-

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. [8]

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. [9]

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 exclusive 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 omsbudsman 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. [10]

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. [11]

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. [12]

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. [13]

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. [15]

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

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 omsbudsman 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. [16]

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, misdemeanor criminal prosecutions and, after grand jury indictment, felony prosecutions. 3 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 fraudulently 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