

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 86/Z

9581 SENATE JUDICIARY

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

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

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

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

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

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

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

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

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

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

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

(11) See note 10, *supra*.

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

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

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

(15) See note 13, *supra*.

(16) *Id.* 4

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

-APAJ-




ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

March 11, 1985

MEMORANDUM

TO: Representative Fritz Pettyjohn

FROM: Sharman Haley 
Legislative Analyst

RE: Appointment of Special Prosecutors in Other States
Research Request 85-226

You asked about statutory mechanisms for appointment of special prosecutors at the federal level and in other states with appointed attorneys general.

Four other states have appointed attorneys general: Hawaii, New Hampshire, New Jersey, and Wyoming. I also checked four states with elected attorneys general--Idaho, Maine, Massachusetts, and Rhode Island--and spoke with a staff person at the National Association of Attorneys General. None of the states are analogous to Alaska. None of the states have statutory mechanisms for the appointment of special prosecutors, other than general authority for the attorney general to do so when a conflict of interest warrants it. The federal Ethics in Government Act enacted in the wake of Watergate is the only statutory model. A copy of the federal law is attached.

The major difference between Alaska's prosecutorial system and that of other states is that most states have elected local prosecutors whose job it is to investigate suspected criminal conduct and to prosecute. Thus, even with an appointed attorney general, there is always someone independent of the governor with authority to investigate and prosecute. The authority of the attorney general to intervene in local prosecutions provides a check and balance on local prosecutors. In most states the attorney general is also elected and therefore independent of the governor. By contrast, in Alaska, the district attorneys are all employed by the attorney general, who in turn, serves at the will of the governor.

A few states have other unique variations on the general pattern. In Maine, the attorney general is appointed by the legislature. In New Hampshire, independence is fostered by five-year terms of office for the attorney general and each of the assistant attorneys general, while the governor serves only a two-year term. Rhode Island is somewhat similar to Alaska in that the district attorneys are all appointed by

Representative Pettyjohn
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the attorney general. The attorney general, however, is elected. New Jersey's system is the most similar to Alaska's in that the attorney general and all of the district attorneys are appointed by the governor. They do not serve at the pleasure of the governor, however, but serve five-year, fixed terms. The governor serves only a four-year term. My contact in the AG's office in New Jersey was not aware of any instances in which the appointment of a special prosecutor was a problem.

Title 28 U.S.C.A. §§591-598 provide for the appointment of a special prosecutor when specified high government officials are suspected of a crime and the attorney general determines that his office would have a conflict of interest in pursuing an investigation. Preliminary investigation by the attorney general and application for the appointment of a special prosecutor are entirely at the discretion of the attorney general and not reviewable by any court. Upon application by the attorney general, the court will appoint a special prosecutor and define his or her jurisdiction. The authority and duties of the special prosecutor are defined in law.

* * * * *

I hope that this memorandum has answered your questions. If we can be of any further research assistance, please call this agency.

SH

Attachments

1 IN THE HOUSE

BY PETTYJOHN

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the conflict of interest of the
7 attorney general or the Department of Law and to the
8 appointment of independent counsel; and providing for
9 an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 * Section 1. AS 39.50 is amended by adding new sections to read:

12 ARTICLE 7. INDEPENDENT COUNSEL ON CONFLICTS OF INTEREST.

13 Sec. 39.50.300. INVESTIGATION BY ATTORNEY GENERAL. The attorney
14 general shall conduct an investigation under AS 39.50.330 whenever the
15 attorney general receives information sufficient to constitute grounds
16 for investigating the conduct of an individual described in AS 39.50.-
17 310 that involves a violation of the criminal law of the state other
18 than an infraction.

19 Sec. 39.50.310. OFFICERS INVOLVED. (a) The individuals subject
20 to an investigation by the attorney general under AS 39.50.330 are

- 21 (1) the governor and lieutenant governor;
22 (2) the head of each principal department;
23 (3) an individual working in the Office of the Governor who
24 is compensated at or above Range 24;
25 (4) an assistant attorney general, district attorney, or
26 assistant district attorney compensated at or above Range 24;
27 (5) the deputy commissioner and the directors of divisions
28 within the Department of Revenue and the director of the Alaska State
29 Troopers;

1 (6) the chairman and treasurer of the principal campaign
2 committee that seeks the election or the reelection of the governor
3 and an individual exercising authority as a campaign manager or
4 director of a gubernatorial campaign committee during the incumbency
5 of the governor.

6 (b) The conduct of an individual described in (a) of this sec-
7 tion is subject to an investigation conducted under AS 39.50.330
8 during the incumbency of the governor served by the individual plus
9 one year after that governor leaves office but in no event longer than
10 two years after the individual leaves office.

11 (c) The conduct of an individual described in (a) of this sec-
12 tion who continues to hold office for not more than 90 days into the
13 term of the next governor is subject to an investigation conducted
14 under AS 39.50.330 during the period the individual serves plus one
15 year after the individual leaves office.

16 Sec. 39.50.320. OTHER PUBLIC OFFICERS. The attorney general may
17 conduct an investigation under AS 39.50.330 whenever the attorney
18 general receives information sufficient to constitute grounds to
19 investigate the conduct of an individual not described in AS 39.50.310
20 that involves a violation of a criminal law of the state other than an
21 infraction. The attorney general may conduct the investigation under
22 AS 39.50.330 and shall request the appointment of independent counsel
23 under AS 39.50.360(b) if the attorney general determines that an
24 investigation by the attorney general may appear to result in a
25 personal, financial, or political conflict of interest.

26 Sec. 39.50.330. PRELIMINARY INVESTIGATION BY ATTORNEY GENERAL.

27 (a) On the receipt of information determined by the attorney general
28 to constitute grounds for the investigation of facts concerning a
29 violation of a criminal law of the state other than an infraction by

1 an individual described in AS 39.50.310 or 39.50.320, the attorney
2 general shall conduct a preliminary investigation of the facts as the
3 attorney general considers appropriate for not to exceed 90 days. In
4 the review of the facts by the attorney general, the attorney general
5 shall consider

6 (1) the degree of specificity of the information received;
7 and

8 (2) the credibility of the source of the information.

9 (b) On a showing of good cause by the attorney general, the
10 three-judge panel may grant the attorney general a single extension of
11 the preliminary examination for a period not to exceed 60 days.

12 (c) The attorney general may not convene a grand jury, engage in
13 plea bargaining, grant immunity from prosecution, or issue subpoenas
14 in a preliminary investigation under this section.

15 (d) During the preliminary investigation under this section and
16 in the determination whether reasonable grounds exist to warrant
17 further investigation or prosecution, the attorney general shall
18 adhere to established policies of the Department of Law with respect
19 to the enforcement of the state criminal laws.

20 (e) After completing a preliminary investigation under this
21 section, the attorney general shall notify the three-judge panel of
22 the conclusions reached. The notification by the attorney general
23 under this subsection shall be by memorandum containing a summary of
24 the information received and a summary of the results of the prelimi-
25 nary investigation.

26 (f) The memorandum together with any documents or materials
27 supplied with the memorandum is not a public record under AS 09.25.-
28 110 - 09.25.120 and may not be disclosed to any individual apart from
29 the judges of the three-judge panel appointed under AS 39.50.360(a) or

1 the Department of Law without the approval of the three-judge panel.

2 Sec. 39.50.340. DETERMINATIONS BY ATTORNEY GENERAL AFTER PRELIMINARY INVESTIGATION. (a) If the attorney general determines on
3 completion of a preliminary investigation under AS 39.50.330 that
4 there are no reasonable grounds to believe that further investigations
5 or prosecution is warranted, the attorney general shall notify the
6 three-judge panel appointed under AS 39.50.360(a) of the results of
7 the preliminary investigation and the three-judge panel may not ap-
8 point an independent counsel.
9

10 (b) If the attorney general determines on completion of a pre-
11 liminary investigation under AS 39.50.330 that further investigation
12 or prosecution is warranted, the attorney general shall apply to the
13 three-judge panel for the appointment of independent counsel.
14

15 (c) A memorandum to a three-judge panel requesting the appoint-
16 ment of independent counsel shall contain sufficient information to
17 assist the three-judge panel to select independent counsel and to
18 define the prosecutorial jurisdiction of the independent counsel.

19 (d) The determination of the attorney general under (a) - (b) of
20 this section is not reviewable in any court.

21 (e) If 90 days have elapsed from the initiation of the prelimi-
22 nary investigation and the attorney general has not made a determina-
23 tion under (a) or (b) of this section, a resident of the state may
24 file a petition with the three-judge panel requesting the appointment
25 of an independent counsel. The three-judge panel shall appoint an
26 independent counsel on its determination that the petition states
27 reasonable grounds for believing that a further investigation or
28 prosecution is warranted.

29 Sec. 39.50.350. ADDITIONAL INFORMATION. (a) If the attorney
general receives additional information sufficient to constitute

1 grounds to alter a determination made under AS 39.50.340(a), the
2 attorney general shall, not later than 90 days after the receipt of
3 the information, apply to the three-judge panel for the appointment of
4 independent counsel.

5 (b) The attorney general may request independent counsel to
6 accept a referral of a matter that relates to the prosecutorial juris-
7 diction of the independent counsel.

8 Sec. 39.50.360. DUTIES OF A THREE-JUDGE PANEL. (a) There is
9 created within the superior court a panel of five superior court
10 judges to be appointed by the chief justice under rules of the supreme
11 court and for terms as may be prescribed by the supreme court. The
12 chief justice shall designate three judges as members of the panel.
13 The chief justice shall designate the remaining two judges as first
14 and second alternates to sit as members of the panel in the event of
15 disqualification or disability under rules prescribed by the supreme
16 court.

17 (b) On receipt of a memorandum under AS 39.50.340(c), the three-
18 judge panel shall consider the memorandum and any documents or mate-
19 rials supplied with it. The three-judge panel shall appoint an attor-
20 ney admitted to practice in the state as independent counsel and shall
21 define the prosecutorial jurisdiction of the independent counsel. The
22 identity of the independent counsel and the prosecutorial jurisdiction
23 may be made public on the request of the attorney general or on a
24 determination by the three-judge panel that disclosure of the identity
25 of the independent counsel and the prosecutorial jurisdiction would be
26 in the best interests of justice. If the identity of the independent
27 counsel and the prosecutorial jurisdiction is not disclosed earlier,
28 the identity of the independent prosecutor and the prosecutorial
29 jurisdiction shall be disclosed if an indictment is returned.

1 (c) The three-judge panel may expand the prosecutorial jurisdic-
2 tion of an existing independent counsel in place of the appointment of
3 additional independent counsel.

4 (d) The three-judge panel may not appoint an individual as
5 independent counsel who holds or recently held an office of profit or
6 trust under the state.

7 (e) If an individual appointed by a three-judge panel resigns or
8 dies in office with the work of the independent counsel incomplete,
9 the three-judge panel may appoint an individual to complete the work
10 of the former independent counsel. If an individual appointed by a
11 three-judge panel is removed or suspended under AS 39.50.410, the
12 three-judge panel shall appoint an acting independent counsel to serve
13 pending review of the removal or suspension.

14 (f) On the request by an individual who was the subject of an
15 investigation conducted by an independent counsel under AS 39.50.300 -
16 39.50.430, the three-judge panel may, in its discretion, award reim-
17 bursement from the state for all or a part of attorneys' fees incurred
18 by the individual if

19 (1) an indictment was not brought against the individual;
20 and

21 (2) the attorneys' fees would not have been incurred except
22 for the investigation under AS 39.50.300 - 39.50.430.

23 Sec. 39.50.370. AUTHORITY AND DUTIES OF INDEPENDENT COUNSEL.

24 (a) Notwithstanding any other provision of law, an individual ap-
25 pointed as independent counsel under AS 39.50.360(b) has, with regard
26 to each matter within the prosecutorial jurisdiction of the indepen-
27 dent counsel, full power and independent authority to exercise the
28 investigative and prosecutorial functions of the attorney general, the
29 Department of Law, and any officer or employee of the Department of

1 Law. The investigative and prosecutorial functions of the attorney
2 general and the Department of Law include

3 (1) the conduct of proceedings before a grand jury;

4 (2) the conduct of investigations apart from proceedings
5 before a grand jury;

6 (3) participation in court proceedings and litigation,
7 either civil or criminal;

8 (4) appeal of a decision in a case or proceeding in which
9 the independent counsel participates in an official capacity;

10 (5) review of documentary evidence from any source;

11 (6) contest of the assertion of a testimonial privilege;

12 (7) review of material otherwise considered confidential
13 under state law if the independent counsel determines that the materi-
14 al is germane to the investigation;

15 (8) application to a court for a grant of immunity under
16 state law to a witness;

17 (9) application for warrants, subpoenas, or other court
18 orders;

19 (10) inspection or use of an original or a copy of a tax
20 return filed under state law to the extent that the attorney general
21 could obtain the tax return for the purposes of an investigation;

22 (11) initiation of an indictment in the name of the state
23 and the conduct of a trial in a court of the state;

24 (12) consultation with the district attorney for the dis-
25 trict in which a violation of the criminal law is alleged to have
26 occurred.

27 (b) Independent counsel may request the assistance from the
28 Department of Law and the Department of Law shall provide the re-
29 quested assistance. Assistance may include access to records, files,

1 or other material relevant to a matter within the jurisdiction of the
2 independent counsel and the use of resources and personnel necessary
3 to the completion of the duties of the independent counsel.

4 (c) Independent counsel may request the attorney general to
5 refer a matter related to the prosecutorial jurisdiction of the inde-
6 pendent counsel. Independent counsel may accept the referral of a
7 matter from the attorney general if the matter relates to a matter
8 within the prosecutorial jurisdiction of the independent counsel as
9 established by the three-judge panel. If a referral is accepted, the
10 independent counsel shall notify the three-judge panel. Independent
11 counsel may request the three-judge panel to expand the prosecutorial
12 jurisdiction of the independent counsel.

13 (d) To the extent possible, independent counsel shall adhere to
14 the established policies of the Department of Law with respect to the
15 enforcement of the state criminal laws.

16 (e) Independent counsel may dismiss a matter within the prose-
17 cutorial jurisdiction of the independent counsel without conducting an
18 investigation or at any time before an indictment is returned if the
19 dismissal is consistent with the established policies of the Depart-
20 ment of Law with regard to the enforcement of the state criminal laws.

21 (f) Independent counsel appointed under AS 39.50.360(b) shall
22 receive compensation at a per diem rate equivalent to the annual rate
23 for Range 26 under the salary schedule established under AS 39.27.011.

24 (g) For the purpose of carrying out duties assigned to indepen-
25 dent counsel, an independent counsel has the power to appoint staff,
26 to fix the compensation of staff, and to assign duties to staff. The
27 positions established under this subsection are in the exempt service.
28 An individual appointed to a position under this subsection may be
29 compensated at a rate not exceeding Range 25.

1 Sec. 39.50.380. REPORTS OF INDEPENDENT COUNSEL. (a) Indepen-
2 dent counsel appointed under AS 39.50.360(b) may report to the legis-
3 lature on the activities of the independent counsel. The reports of
4 independent counsel shall contain information considered appropriate
5 by independent counsel.

6 (b) Independent counsel shall report to the three-judge panel on
7 the activities of the independent counsel. A report under this
8 subsection shall set out fully and completely a description of the
9 work of the independent counsel, including the disposition of all
10 cases brought and the reasons for declining prosecution on a matter
11 within the prosecutorial jurisdiction of the independent counsel.

12 (c) The three-judge panel may release to the legislature, the
13 public, and an individual portions of a report made under (b) of this
14 section. The three-judge panel shall make appropriate orders to
15 protect the rights of an individual named in the report and to prevent
16 undue interference with a pending or anticipated prosecution.

17 (d) The three-judge panel may make a portion of a report under
18 (b) of this section available to an individual named in the report and
19 invite the individual to comment or offer factual information germane
20 to the comments in the report on the individual. The three-judge
21 panel may include the comments and the factual information, in whole
22 or in part, in its publication of the report.

23 Sec. 39.50.390. IMPEACHMENT. Independent counsel shall advise
24 the senate of credible and substantial information received by inde-
25 pendent counsel that may constitute grounds for impeachment. Docu-
26 ments and records developed by the independent counsel are available
27 to the senate or the house of representatives during an impeachment
28 proceeding.

29 Sec. 39.50.400. LEGISLATIVE OVERSIGHT. (a) The judiciary

1 committees of the legislature may exercise legislative oversight
2 jurisdiction with respect to the conduct of independent counsel and
3 independent counsel shall cooperate with the judiciary committees in
4 the exercise of their legislative oversight jurisdiction.

5 (b) A majority of majority party members of a judiciary commit-
6 tee or a majority of minority party members of a judiciary committee
7 may request in writing that the attorney general request the appoint-
8 ment of independent counsel.

9 (c) Not later than 30 days after the receipt of the request or
10 not later than 15 days after the completion of a preliminary investi-
11 gation of the matter that is the subject of the request, whichever is
12 later, the attorney general shall notify the committee of action taken
13 under the request and, if a request for the appointment of an inde-
14 pendent counsel has not been made by the attorney general, why a
15 request has not been made.

16 (d) The notification shall be provided to the committee on which
17 the members making the request to the attorney general serve and the
18 notification may not be revealed to any other person unless the com-
19 mittee, either on its own initiative or on the request of the attorney
20 general, makes public portions of the notification that will not, in
21 the judgment of the committee, prejudice the rights of an individual.

22 Sec. 39.50.410. REMOVAL OF INDEPENDENT COUNSEL. (a) An inde-
23 pendent counsel appointed under AS 39.50.360(b) may be removed from
24 office, except by impeachment and conviction, only by the personal act
25 of the attorney general and only for good cause, physical disability,
26 mental incapacity, or other condition that substantially impairs the
27 performance of the duties by the independent counsel. If the attorney
28 general removes an independent counsel from office, the attorney
29 general shall promptly report to the three-judge panel and the

1 judiciary committees of the legislature the facts found and the actual
2 grounds for the removal.

3 (b) The committees shall make the report available to the public
4 except that each committee may, to protect the rights of an individual
5 named in the report or to prevent undue interference with a pending or
6 anticipated prosecution, delete portions of the report or delay the
7 publication of any or all of the report.

8 (c) The three-judge panel may release any or all of the report
9 and may make a portion of a report filed under (a) of this section
10 available to an individual named in the report and invite the indi-
11 vidual to comment or offer factual information germane to the comments
12 in the report on the individual. The three-judge panel may include
13 the comments and the factual information, in whole or in part, in its
14 publication of the report.

15 (d) An independent counsel removed under this section may obtain
16 judicial review of the removal in a petition filed before the three-
17 judge panel and, if the removal was based on error of fact or law, may
18 obtain reinstatement and other appropriate relief. The three-judge
19 panel shall expedite the hearing and decision on the petition.

20 Sec. 39.50.420. TERMINATION OF RESPONSIBILITIES OF AN INDEPEN-
21 DENT COUNSEL. (a) The responsibilities of an independent counsel
22 terminate when

23 (1) the independent counsel notifies the attorney general
24 that the investigation of each matter within the prosecutorial juris-
25 diction of the independent counsel or accepted under AS 39.50.370(c)
26 has been completed or so substantially completed that it would be
27 appropriate for prosecutors from the Department of Law to complete the
28 investigation or prosecution; and

29 (2) the independent counsel files a final report under

1 AS 39.50.380.

2 (b) The three-judge panel may at any time terminate the respor-
3 sibilities of an individual acting as independent counsel, either on
4 its own motion or on the request of the attorney general, on its
5 determination that the investigation or each matter within the prose-
6 cutorial jurisdiction of the independent counsel or accepted under
7 AS 39.50.370(c) has been completed or so substantially completed that
8 it would be appropriate for prosecutors from the Department of Law to
9 complete the investigation or prosecution. If the responsibilities of
10 independent counsel are terminated under this subsection, the indepen-
11 dent counsel shall file a final report under AS 39.50.380.

12 Sec. 39.50.430. RELATIONSHIP WITH DEPARTMENT OF LAW. (a) When
13 a matter is within the prosecutorial jurisdiction of an independent
14 counsel or has been accepted by an independent counsel under AS 39.-
15 50.370(c), the Department of Law, the attorney general, and the prose-
16 cutors of the Department of Law shall suspend each investigation and
17 proceeding regarding the matter except to the extent that independent
18 counsel requests the assistance of the Department of Law under AS 39.-
19 50.370(b).

20 (b) The provisions of AS 39.50.300 - 39.50.430 do not prevent
21 the attorney general or an attorney from the Department of Law from
22 making a presentation to a court as amicus curiae as to issues raised
23 by a case or proceeding in which an independent counsel participates
24 in an official role.

25 * Sec. 2. AS 39.25.110 is amended to read:

26 Sec. 39.25.110. EXEMPT SERVICE. Unless otherwise provided by
27 law, the following positions in the state service constitute the
28 exempt service and are exempt from the provisions of this chapter and
29 the rules adopted under it:

1 (1) persons elected to public office by popular vote or
2 appointed to fill vacancies in elected offices;

3 (2) justices, judges, magistrates, and employees of the
4 judicial branch including employees of the Judicial Council;

5 (3) employees of the state legislature and its agencies;

6 (4) the head of each principal department in the executive
7 branch;

8 (5) officers and employees of the University of Alaska;

9 (6) certificated teachers and noncertificated employees
10 employed by a regional educational attendance area established and
11 organized under AS 14.08.031 - 14.08.041 to teach in, administer, or
12 operate schools under the control of a regional educational attendance
13 area school board;

14 (7) certificated teachers employed by the Department of
15 Education as correspondence teachers or teachers in skill centers
16 operated by the Department of Education;

17 (8) patients and inmates employed in state institutions;

18 (9) persons employed in a professional capacity to make a
19 temporary or special inquiry, study or examination as authorized by
20 the governor;

21 (10) members of boards, commissions, or authorities;

22 (11) the officers and employees of the following boards,
23 commissions, and authorities:

24 (A) Alaska Gas Pipeline Financing Authority;

25 (B) Alaska Permanent Fund Corporation;

26 (C) Alaska Energy Center;

27 (D) Alaska Industrial Development Authority;

28 (E) Alaska Commercial Fisheries Entry Commission;

29 (F) Alaska Commission on Postsecondary Education;

1 (12) the executive secretary and legal counsel of the Alaska
2 Municipal Bond Bank Authority;

3 (13) physicians licensed to practice in this state and
4 employed by the division of mental health and developmental disabili-
5 ties, Department of Health and Social Services;

6 (14) petroleum engineers and petroleum geologists employed
7 in a professional capacity by the Department of Natural Resources and
8 by the Oil and Gas Conservation Commission, except for those employed
9 in the division of geological and geophysical surveys in the Depart-
10 ment of Natural Resources;

11 (15) officers, agents, and employees of the Alcoholic Bever-
12 age Control Board granted limited peace officer powers by the Alco-
13 holic Beverage Control Board under AS 04.06.110;

14 (16) persons employed by the division of marine transporta-
15 tion as masters and members of the crews of vessels who operate the
16 state ferry system and who are covered by a collective bargaining
17 agreement provided in AS 23.40.040;

18 (17) officers and employees of the state who reside in
19 foreign countries;

20 (18) employees of the Alaska Seafood Marketing Institute;

21 (19) firefighters employed by the Department of Natural
22 Resources for a fire emergency;

23 (20) employees of the Office of the Governor and the office
24 of the lieutenant governor, including the staff of the governor's
25 mansion;

26 (21) Employees of the Citizens' Advisory Commission on
27 Federal Areas in Alaska (AS 41.37.010);

28 (22) youth employed by the Department of Natural Resources
29 under the Youth Employment and Student Intern programs;

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(23) independent counsel and the staff of independent counsel appointed under AS 39.50.360(b).

* Sec. 3. This Act takes effect immediately in accordance with AS 01.-10.070(c).




Official Business

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: March 6, 1985
TO: All lawmakers
SUBJECT: Special Prosecutor
FROM: Representative Fritz Pettyjohn 

Dear Colleague:

I enclose a copy of Chapter 39 of Title 28 of the United States Code. I am preparing a bill which will be substantially similar to this Chapter.

Any comments or suggestions you might have in this regard would be appreciated.

FP/dw
encl

CHAPTER 39—INDEPENDENT COUNSEL¹

Sec	Sec	Sec
591	595	Reporting and congressional oversight.
592	596	Removal of a 2 independent counsel, termination of office.
593	597	Relationship with Department of Justice.
594	598	Termination of effect of chapter.

¹ Another chapter 39, comprising sections 581 to 589 of this title, is set out after

² So in original. Probably should read "an"

1983 Amendment. Pub L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039, substituted "independent counsel" for "special prosecutor" in the chapter heading and in items 592, 594, and 596 of the analysis.

§ 591. Applicability of provisions of this chapter

(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives information sufficient to constitute grounds to investigate that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense.

(b) The persons referred to in subsection (a) of this section are—

- (1) the President and Vice President;
- (2) any individual serving in a position listed in section 5312 of title 5;
- (3) any individual working in the Executive Office of the President who is compensated at or above a rate equivalent to level II of the Executive Schedule under section 5313 of title 5;
- (4) any Assistant Attorney General and any individual working in the Department of Justice compensated at a rate at or above level III of the Executive Schedule under section 5314 of title 5;
- (5) the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;
- (6) any individual who held any office or position described in any of paragraphs (1) through (5) of this subsection during the period consisting of the incumbency of the President such individual serves plus one year after such incumbency, but in no event longer than two years after the individual leaves office;
- (7) any individual described in paragraph (6) who continues to hold office for not more than 90 days into the term of the next President during the period such individual serves plus one year after such individual leaves office;
- (8) the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President, and any officer of the campaign exercising authority at the national level, such as the campaign manager or director, during the incumbency of the President.

(c) Whenever the Attorney General receives information sufficient to constitute grounds to investigate that any person not described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense, the Attorney General may conduct an investigation and apply for an independent counsel pursuant to the provisions of this chapter if the Attorney General determines that investigation of such person by the Attorney General or other officer of the Department of Justice may result in a personal, financial, or political conflict of interest.

(Added Pub L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1867, and amended Pub L. 97-409, § 3, (a), Jan. 3, 1983, 96 Stat. 2039, 2041)

1983 Amendment. Subsec. (a). Pub L. 97-409, § 1(a)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "the Attorney General receives"

Subsec. (b)(3) (4). Pub L. 97-409, § 3, substituted reference to any individual working in the Executive Office of the President, an Assistant Attorney General or individual working in the Executive Department, the Director and Deputy Di-

rector of Central Intelligence and the Commissioner of Internal Revenue, any of the above who held office during the incumbency of the President they served plus one year thereafter but in no event two, an individual such as the latter still in office not more than 90 days into the term of the next President during the individual's service plus one year after he leaves office, and the chairman, treasurer, and any officer exercising authority at the national level of the campaign for the reelection of the President during his incumbency, for reference to any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of Title 5, any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of Title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue, any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President, and any officer of the principal national campaign committee seeking the election or reelection of the President.

Subsec. (c). Pub L. 97-409, § 4(a)(2), added subsec. (c).

Effective Date. Section 174 of Pub L. 95-521 provided that: "Except as provided in this section, the amendments made by this title [enacting this chapter and sections 49, 52A, and 529 of this title] shall take effect on the date of the enactment of this Act [Oct. 26, 1978]. The provisions of chapter 39 of title 28 of the United States Code, as

added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 501 of such title 28, if the Attorney General determines that—

"(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

"(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act [Oct. 26, 1978]; or

"(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act [Oct. 26, 1978]."

Contingency Fund for Independent Counsels, Section 601(c) of Pub L. 95-521, as amended Pub L. 97-409, § 2(c)(2), Jan. 3, 1983, 96 Stat. 2039, provided that: "There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any independent counsels appointed under chapter 39 (relating to special prosecutor [independent counsel]) of title 28 of the United States Code [this chapter] in the carrying out of functions under such chapter."

Legislative History. For legislative history and purpose of Pub L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3517.

Library References
Attorney General — 6
CJS Attorney General §§ 7 to 15.

§ 592. Application for appointment of a 1 independent counsel

(a) (1) Upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate. In determining whether grounds to investigate exist, the Attorney General shall consider—

- (A) the degree of specificity of the information received, and
- (B) the credibility of the source of the information.

(2) In conducting preliminary investigations pursuant to this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas.

(b) (1) If the Attorney General, upon completion of the preliminary investigation, finds that there are no reasonable grounds to believe that further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a 1 independent counsel.

(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(c)(1) If the Attorney General, upon completion of the preliminary investigation, finds reasonable grounds to believe that further investigation or prosecution is warranted, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that there are no reasonable grounds to believe that further investigation or prosecution is warranted, then the Attorney General shall apply to the division of the court for the appointment of a¹ independent counsel. In determining whether reasonable grounds exist to warrant further investigation or prosecution, the Attorney General shall comply with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(2) If--

(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional information sufficient to constitute grounds to investigate about the matter to which such memorandum related, and

(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that reasonable grounds exist to warrant further investigation or prosecution,

then the Attorney General shall, not later than ninety days after receiving such additional information, apply to the division of the court for the appointment of a¹ independent counsel.

(d)(1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a¹ independent counsel and to define that independent counsel's prosecutorial jurisdiction.

(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

(e) The Attorney General may ask a¹ independent counsel to accept referral of a matter that relates to a matter within that independent counsel's prosecutorial jurisdiction.

(f) The Attorney General's determination under subsection (e) of this section to apply to the division of the court for the appointment of a¹ independent counsel shall not be reviewable in any court.

(Added Pub.L. 95-521, Title VI, § 601(n), Oct. 26, 1978, 92 Stat. 1868, and amended Pub.L. 97-409, §§ 2(a)(1), 4(b) (c), Jan. 3, 1983, 96 Stat. 2019-2011.)

¹ So in original. Probably should read "an".

1983 Amendment. Subsec. (a). Pub.L. 97-409, § 4(b), substituted direction, designated par. (1), that upon receiving information that the Attorney General determines is sufficient to constitute grounds to investigate that any person covered by the Act has engaged in conduct described in subsection (a) or (c) of section 591 of this title, the Attorney General shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate, and that in determining whether grounds to investigate exist, the Attorney General shall consider the degree of specificity of the information received and the credibility of the source of the information for provision that the Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title had engaged in conduct described in section 591(a) of this title, was in conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deemed appropriate, and added par. (2).

Subsec. (b)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(c), substituted "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated that no further investigation or prosecution is warranted".

Subsec. (c)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 4(d)(1), substituted "finds reasonable grounds to believe that further investigation or prosecution is warranted" for "finds the matter warrants further investigation or prosecution" after "preliminary investigation".

Pub.L. 97-409, § 4(d)(2), substituted "that there are no reasonable grounds to believe that further investigation or prosecution is warranted" for "that the matter is so unsubstantiated as not to warrant further investigation or prosecution".

Pub.L. 97-409, § 4(d)(3), added provision that in determining whether reasonable grounds exist to warrant further investigation, the Attorney General shall comply with written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

Subsec. (c)(2). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" in the provisions following subpar. (B).

Subsec. (c)(2)(A). Pub.L. 97-409, § 4(c)(1), substituted "information sufficient to constitute grounds to investigate" for "specific information" after "receives additional".

Subsec. (c)(2)(B). Pub.L. 97-409, § 4(c)(2), substituted "reasonable grounds exist to warrant" for "such information warrants" after "appropriate, that".

Subsec. (d)(1), (c). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(B), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

References in Text. The Act, referred to in subsec. (a)(1), probably means the Ethics in Government Act of 1978 which enacted this chapter. For complete classification of that Act to the Code, see Short Title note under section 101 of Title 2, The Congress and Tables volume.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

Attorney General § 6.
District and Prosecuting Attorneys § 1(1)

§ 593. Duties of the division of the court

(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate independent counsel and shall define that independent counsel's prosecutorial jurisdiction. A¹ independent counsel's identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such independent counsel would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor² shall be made public when any indictment is returned or any criminal information is filed.

(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing independent counsel, and such expansion may be in lieu of the appointment of an additional independent counsel.

(d) The division of the court may not appoint as a¹ independent counsel any person who holds or recently held any office of profit or trust under the United States.

(e) If a vacancy in office arises by reason of the resignation or death of a¹ independent counsel, the division of the court may appoint a¹ independent counsel to

U.S. Attorney General §§ 7 to 15.
U.S. District and Prosecuting Attorneys § 78

Notes of Decisions

Jurisdiction 2
Preliminary Investigations 3
Standing 1

1. Standing

Person supplying Attorney General with specific information of suspected criminal conduct by high federal official covered by this chapter has standing to invoke procedures mandated by this chapter upon Attorney General's refusal to investigate. *Nathan v. Attorney General of United States*, D.C.D.C.1983, 557 F.Supp. 1186.

2. Jurisdiction

District court has jurisdiction to enforce procedures mandated by this chapter upon Attorney's General's refusal to investigate specific information of suspected criminal conduct by high federal officials covered by this chapter, notwithstanding provisions precluding judicial review once Attorney General applies for appointment of special prosecutor. *Nathan v. Attorney General of United States*, D.C.D.C.1983, 557 F.Supp. 1186.

3. Preliminary Investigation

Plaintiffs furnished sufficient "specific information" within meaning of this chapter to trigger preliminary investigation into conduct of any person covered by this chapter named in information submitted by plaintiffs relating to violations of section 1981 et seq. of Title 42 arising out of disruption of parade, but plaintiffs were not entitled to appointment of special prosecutor, absent showing that Attorney General acted in bad faith when deciding not to make preliminary investigation. *Nathan v. Attorney General of U.S.*, D.C.D.C.1983, 561 F.Supp. 815.

complete the work of the independent counsel whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a¹ independent counsel, the division of the court may appoint an acting independent counsel to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

(f) Upon a showing of good cause by the Attorney General, the division of the court may grant a single extension of the preliminary investigation conducted pursuant to section 592(a) of this title for a period not to exceed sixty days.

(g) Upon request by the subject of an investigation conducted by an independent counsel pursuant to this chapter, the division of the court may, in its discretion, award reimbursement for all or part of the attorney's fees incurred by such subject during such investigation if—

(1) no indictment is brought against such subject; and

(2) the attorney's fees would not have been incurred but for the requirements of this chapter.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, § 4 2(a)(1), 5, Jan. 3, 1983, 96 Stat. 2039, 2041.)

¹ So in original.

² So in original. Substitution of "counsel" for "prosecutor" was not made by Pub.L. 97-409.

1983 Amendment. Subsec. (b) Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(D), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsecs. (c)-(e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Subsecs. (f), (g). Pub.L. 97-409, § 5, added subsec. (f) and (g).

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this

title based on determinations made by the Attorney General respecting such information, see section 604 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3337.

Library References

District and Prosecuting Attorneys § 1(1)
Federal Courts § 1014

C.J.S. District and Prosecuting Attorneys § 7
to 15.

C.J.S. Federal Courts § 28

§ 591. Authority and duties of a¹ independent counsel

(a) Notwithstanding any other provision of law, a¹ independent counsel appointed under this chapter shall have, with respect to all matters in such independent counsel's prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that specifically require the Attorney General's personal action under section 2616 of title 18. Such investigative and prosecutorial functions and powers shall include—

- (1) conducting proceedings before grand juries and other investigations;
- (2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such independent counsel deems necessary;
- (3) appealing any decision of a court in any case or proceeding in which such independent counsel participates in an official capacity;
- (4) reviewing all documentary evidence available from any source;
- (5) determining whether to contest the assertion of any testimonial privilege;
- (6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;
- (7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and

6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States; and

(10) consulting with the United States Attorney for the district in which the violation was alleged to have occurred.

(b) A¹ independent counsel appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

(c) For the purposes of carrying out the duties of the office of independent counsel, a¹ independent counsel shall have power to appoint, fix the compensation, and assign the duties, of such employees as such independent counsel deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

(d) A¹ independent counsel may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such independent counsel's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such independent counsel's duties.

(e) A¹ independent counsel may ask the Attorney General or the division of the court to refer matters related to the independent counsel's prosecutorial jurisdiction. A¹ independent counsel may accept referral of a matter by the Attorney General, if the matter relates to a matter within such independent counsel's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the independent counsel shall notify the division of the court.

(f) A¹ independent counsel shall, except where not possible, comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

(g) The independent counsel shall have full authority to dismiss matters within his prosecutorial jurisdiction without conducting an investigation or at any subsequent time prior to prosecution if to do so would be consistent with the written or other established policies of the Department of Justice with respect to the enforcement of criminal laws.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1869, and amended Pub.L. 97-409, § 4 2(a)(1), 6(a)-(c), Jan. 3, 1983, 96 Stat. 2039, 2041.)

¹ So in original. Probably should read "an".

1983 Amendment. Catchline Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 2(a)(1)(D), substituted "independent counsel's" for "special prosecutor's".

Subsec. (a)(10). Pub.L. 97-409, § 6(a), added par. (10).

Subsecs. (b), (c). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsecs. (f), (g). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(D), substituted "independent counsel's" for "special prosecutor's" wherever appearing.

Subsec. (f). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub.L. 97-409, § 6(b)(1), substituted "except where not possible" for "in the extent that such special prosecutor deems appropriate" after "prosecutor shall".

Pub.L. 97-409, § 6(b)(2), substituted "written or other established policies" for "written policies" after "comply with the".

Subsec. (g). Pub.L. 97-409, § 6(c), added subsec. (g).

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the

Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 601 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code

Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

District and Prosecuting Attorneys § 3(4).
C.J.S. District and Prosecuting Attorneys § 30.

595. Reporting and congressional oversight

(a) A ¹ independent counsel appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such independent counsel. These statements and reports shall contain such information as such independent counsel deems appropriate.

(b) (1) In addition to any reports made under subsection (a) of this section, and before the termination of a ¹ independent counsel's office under section 596(b) of this title, such independent counsel shall submit to the division of the court a report under this subsection.

(2) A report under this subsection shall set forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel which was not prosecuted.

(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

(c) A ¹ independent counsel shall advise the House of Representatives of any substantial and credible information which such independent counsel receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any independent counsel appointed under this chapter, and such independent counsel shall have the duty to cooperate with the exercise of such oversight jurisdiction.

(e) A majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a ¹ independent counsel. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1871, and amended Pub.L. 97-409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039.)

1 So in original. Probably should be "a".

1983 Amendment, Subsec. (a). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Subsec. (b)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(U), substituted "independent counsel's" for "special prosecutor's".

Subsecs. (b)(2), (c), (d), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the

Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 601 of Pub.L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub.L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub.L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

Library References

District and Prosecuting Attorneys § 3(4).
C.J.S. District and Prosecuting Attorneys § 30.

§ 596. Removal of a ¹ independent counsel: termination of office

(a) (1) A ¹ independent counsel appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such independent counsel's duties.

(2) If a ¹ independent counsel is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b) (3) of this title and under the same limitations as apply to the release of a report under that section.

(3) A ¹ independent counsel so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

(b) (1) An office of independent counsel shall terminate when (A) the independent counsel notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such independent counsel or accepted by such independent counsel under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the independent counsel files a report in full compliance with section 595(h) of this title.

(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of independent counsel at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the independent counsel or accepted by such independent counsel under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the independent counsel shall file the report required by section 595(h) of this title.

(Added Pub.L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub.L. 97-409, §§ 2(a)(1), 6(d), Jan. 3, 1983, 96 Stat. 2039, 2042.)

1 So in original. Probably should read "an".

1983 Amendment, Catchline. Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Subsec. (a)(1). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor".

Pub.L. 97-409, § 2(a)(1)(U), substituted "independent counsel's" for "special prosecutor's".

Pub.L. 97-409, § 6(d), substituted "good cause" for "extraordinary impropriety" after "and only for".

Subsecs. (a)(2), (c), (d), (e). Pub.L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the

Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub. L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub. L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub. L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

§ 597. Relationship with Department of Justice

(a) Whenever a matter is in the prosecutorial jurisdiction of a ¹ independent counsel or has been accepted by a ¹ independent counsel under section 594(e) of this title, the Department of Justice, the Attorney General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such independent counsel agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a ¹ independent counsel participates in an official capacity or any appeal of such a case or proceeding.

(Added Pub. L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1872, and amended Pub. L. 97-409, § 2(a)(1)(A), Jan. 3, 1983, 96 Stat. 2039.)

¹ So in original. Probably should be "An".

1983 Amendment. Pub. L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attor-

ney General respecting such information, see section 604 of Pub. L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub. L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub. L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

§ 598. Termination of effect of chapter

This chapter shall cease to have effect five years after the date of the enactment of the Ethics in Government Act Amendments of 1982, except that this chapter shall continue in effect with respect to then pending matters before a ¹ independent counsel that in the judgment of such independent counsel require such continuation until that independent counsel determines such matters have been completed.

(Added Pub. L. 95-521, Title VI, § 601(a), Oct. 26, 1978, 92 Stat. 1873, and amended Pub. L. 97-409, § 2(a)(1)(A), 7, Jan. 3, 1983, 96 Stat. 2039, 2042.)

¹ So in original.

References in Text. The date of enactment of the ethics in Government Act Amendments of 1982, referred to in text, is the date of enactment of Pub. L. 97-409, which was approved Jan. 3, 1983.

Codification. The directory language of section 7 of Pub. L. 97-409 incorrectly quoted the words being replaced by "after the date of enactment of the Ethics in Government Act Amendments of 1982". However the error is of academic interest only since it appears in the quotation of the language being replaced and not in the quotation of the surviving replacement language.

1983 Amendment. Pub. L. 97-409, § 2(a)(1)(A), substituted "independent counsel" for "special prosecutor" wherever appearing.

Pub. L. 97-409, § 7, substituted reference to the date of enactment of the Ethics in Government Act Amendments of 1982 for reference to the date of enactment of this chapter.

Effective Date. Section effective Oct. 26, 1978, except for specific information received by the Attorney General pursuant to section 591 of this title based on determinations made by the Attorney General respecting such information, see section 604 of Pub. L. 95-521, set out as a note under section 591 of this title.

Legislative History. For legislative history and purpose of Pub. L. 95-521, see 1978 U.S. Code Cong. and Adm. News, p. 4216. See, also, Pub. L. 97-409, 1982 U.S. Code Cong. and Adm. News, p. 3537.

PART III—COURT OFFICERS AND EMPLOYEES

Chapter	Section
43. United States Magistrates	631
51. United States Claims Court	791
(53. Repealed)	
55. Court of International Trade	871

Amendment Effective April 1, 1984

Pub. L. 95-593, Title II, § 233(b), Title IV, § 402(b), Nov. 6, 1978, 92 Stat. 2667, 2682, provided that, effective Apr. 1, 1984, the analysis of chapters comprising Part III is amended by adding

"50. Bankruptcy Courts

1982 Amendment. Pub. L. 97-164, Title I, §§ 121(g)(1), 122(a), Apr. 7, 1982, 96 Stat. 35, 36, substituted "United States Claims Court" for "Court of Claims" in item 51 and struck out item 53 "Court of Customs and Patent Appeals".

1980 Amendment. Pub. L. 96-412, Title V, § 501(13), Oct. 10, 1980, 94 Stat. 1742, substitut-

ed "Court of International Trade" for "Customs Court" as chapter 55 heading.

1968 Amendment. Pub. L. 90-378, Title I, § 102(a), Oct. 17, 1968, 82 Stat. 1114, substituted "United States Magistrates" for "United States Commissioners" as the heading of chapter 43.

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

§ 601. Creation; Director and Deputy Director

Federal Practice and Procedure

Records required to be kept by Administrative Office of the United States Courts, see Wright Criminal 2d § 881.

§ 602. Employees

(a) The Director shall appoint and fix the compensation of necessary employees of the Administrative Office in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates.

(b) Notwithstanding any other law, the Director may appoint certified interpreters in accordance with section 604(a)(15)(B) of this title without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, but the compensation of any person appointed under this subsection shall not exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(c) The Director may obtain personal services as authorized by section 3109 of title 5, at rates not to exceed the appropriate equivalent of the highest rate of pay payable for the highest grade established in the General Schedule, section 5332 of title 5.

(d) All functions of other officers and employees of the Administrative Office and all functions of organizational units of the Administrative Office are vested in the Director. The Director may delegate any of the Director's functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate, and subject to such terms and conditions as the Director may consider appropriate; and may authorize the successive reassignment of such functions, powers, duties, and authority as the Director may deem desirable. All official acts performed by such officers and employees shall have the same force and effect as though performed by the Director in person.

(As amended Oct. 28, 1978, Pub. L. 95-519, § 5, 92 Stat. 2014.)



Official Business

Alaska State Legislature

House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811

March 6, 1985

Mr. Norman C. Gorsuch
Attorney General,
State of Alaska
Pouch K
Juneau, Alaska 99811

Dear Sir:

This letter constitutes a formal request that you appoint either a special prosecutor or an independent investigator to determine if there have been violations of state law in connection with the activities in the North Slope Borough.

The activities in question include the transactions described in the Main Hurdman Compliance Report for the North Slope Borough Assembly, dated December 4, 1984. They also include the extensive reports which have emerged through the media, involving the same individuals who are discussed in the audit.

In Representative Fritz Pettyjohn's letter to you dated March 1, 1985, he inquired as to your position with regard to conflict of interest.

Specifically, he asked about the conflict which can arise out of your dual role as both the attorney for the governor, and as the chief prosecuting officer for the state of Alaska.

Daniel Hickey's letter of the same date and in response on your behalf, did not address these questions.

We feel the failure of your office to conduct an investigation before this date may be related to the fact that your client, Governor Sheffield, held a fundraiser in Seattle on May 16, 1984, at which the individuals and corporations named in the Main Hurdman audit contributed \$52,000 to the Sheffield/McAlpine Committee, and that, two days later, your client received a check for \$70,000 from that committee. The \$70,000 went directly into his personal funds in repayment of a personal loan he had made to his campaign.

To say that your client's conduct was of questionable propriety is perhaps too delicate. As his attorney, surely you have advised him of the legality of his actions. As chief prosecutor for the state of Alaska, you are in a somewhat compromising position.

Attorney General Gorsuch
March 6, 1985
page 2

A similar situation occurred in the winter and spring of 1983, when questions arose about a fundraising trip you and your client made. You raised approximately \$200,000 from oil companies and lobbyists, which again went into your client's personal funds in repayment of a campaign loan.

In response to the criticism of this conduct, Governor Sheffield stated that if an investigation into the fundraising trip was warranted, it should be conducted by a special prosecutor (Anchorage Daily News, March 5, 1983). Subsequently, an "independent investigator" was appointed and an investigation took place.

We suggest to you that the present circumstances are even more compelling than those which led to the appointment of that "independent investigator." After all, the oil executives and the lobbyists who contributed the \$200,000 to your client were not engaged in the kind of activities which took place in the North Slope Borough by the contributors of May 16, 1984.

Although we have not contacted him, we would suggest retired Superior Court Judge Ralph Moody would be an appropriate person to be named either special prosecutor or "independent investigator."

Judge Moody's 22 years on the Superior Court bench and his untarnished reputation for integrity would make him a logical choice. He has served as the Democratic Majority Leader of the Alaska State Senate, and as Attorney General under former Governor Egan before his judicial appointment.

In a speech to the Anchorage Chamber of Commerce February 28, 1983, you stated that improvements were needed in the conflict of interest laws to clarify what actions by public officials and state employees should be prohibited. To that end, Senate Bill 501 was introduced at the governor's request on February 14, 1984. For some reason, no such bill has been introduced this year. We would be interested in the current position of the administration on this subject. In that connection, we are preparing legislation which would parallel Chapter 39 of Title 28 of the United States Code, dealing with the appointment of independent counsel to investigate alleged wrongdoing within the Executive.

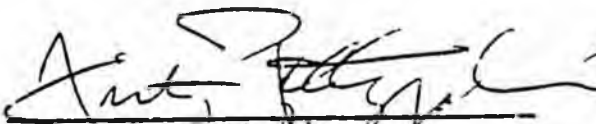
We would appreciate any suggestions you might have in this regard.

In closing, we believe anything short of the appointment of someone of the stature of Judge Moody as special prosecutor or investigator, would not satisfy the public demand for a full and complete inquiry into the finances of the previous North Slope Borough administration. We urge you

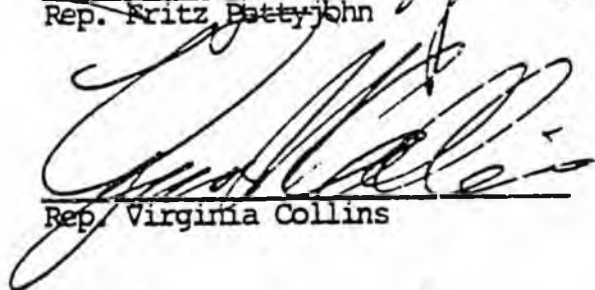
Attorney General. Gorsuch
March 6, 1985
page 3


to give this matter thorough consideration.

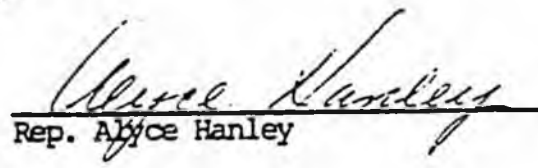
Cordially,

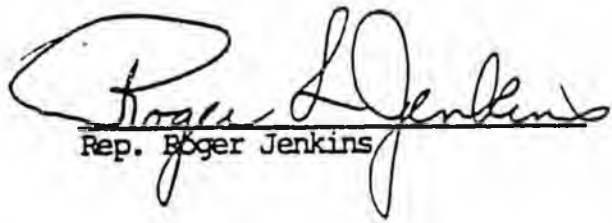

Rep. Fritz Pattynjohn

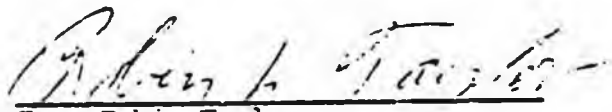

Rep. Drue Pearce


Rep. Virginia Collins


Rep. Andre Marrou


Rep. Alyce Hanley


Rep. Roger Jenkins


Rep. Robin Taylor



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 28, 1982

MEMORANDUM

TO: Representative Barnes

FROM: Leslie Longenbaugh *W*
Research Staff

RE: Relationship of Elected and Appointed Attorneys
General in Other States to Prosecuting Attorneys
Research Request Number 82-9

Bill Cook of your staff asked that we report on the relationship between state attorneys general and state prosecuting attorneys. Specifically, Mr. Cook asked that we survey other states in regard to their election or appointment of attorneys general and prosecutors, and the degree to which prosecutors are independent of the attorneys general.

In most states, both the attorney general and the prosecuting attorneys are elected. Most attorneys general head their states' justice or law departments but have few or no statutory responsibilities concerning the prosecution of either criminal or civil cases. When they do have prosecutorial responsibilities, attorneys general in most states prosecute only appealed criminal cases. The attorney general is charged by statute (AS 44.23.020) with, among other duties, prosecuting violations of State law. The attorney general appoints regional district attorneys to fulfill these prosecutorial duties, and he may remove these appointees from office.

Ruth Blau of the National Association of Attorneys General¹ informed us that most attorneys general are elected; Alaska is among the six states that appoint, rather than elect, their attorneys general. In Maine, the legislature appoints the attorney general; in New Hampshire, the governor appoints with the aid of the Executive Council, made up of county representatives who are not in the state legislature; in Tennessee, the state Supreme Court makes the appointment; and in Wyoming and New Jersey the governor appoints the attorney general.

²Ruth Blau, Publications Director, National Association of Attorneys General, Washington, D.C.; telephone: (202) 624-5454.

Representative Barnes
January 28, 1982
Page 3

We also spoke with Tom Hinton of the National District Attorneys' Association³, who informed us that prosecuting attorneys in most states are elected from within the county, election district, or other area they serve. According to Mr. Hinton, only in Alaska, Connecticut, and New Jersey are district attorneys appointed rather than elected.

Several states make a distinction in jurisdiction between criminal and civil prosecutions. In Texas, for example, the elected "district attorneys" prosecute only criminal cases, while the also elected "county attorneys" may handle both civil and criminal prosecutions.

Some of the minimum qualifications for elected prosecuting attorneys vary widely from one state to the next, although almost all states require that candidates be trained attorneys.

Mr. Hinton stated his belief that a change to an elected attorney general could compromise the integrity of the district attorneys in Alaska, if the attorney general remained charged with their appointment. An example of such a conflict is the possibility that district attorneys' prosecutions sometimes would become entangled with the attorney general's desire to win reelection. He suggested the following methods of selection, both of which he feels would maintain the prosecutors' integrity.

- gubernatorial appointment with approval by one or both houses of the state legislature, a method which would maintain control of prosecutors at the state level; and
- popular election within the regions they serve, a method which would offer the local citizenry more direct control over its prosecuting attorneys.

Mr. Hinton stated his conviction that California has the "most efficient" criminal justice system. The popularly-elected attorney general heads the state department of justice, which performs criminal justice planning and renders legal advice to state government agencies and officials. The attorney general usually has only incidental relations with the locally-elected county district attorneys, who prosecute all civil and criminal cases during their four-year terms of office. The California attorney general and district attorneys may be impeached and removed from office by the state legislature.

³Tom Hinton, National District Attorneys' Association, Virginia; telephone: (703) 549-9222.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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

January 28, 1982

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²Ruth Blau, Publications Director, National Association of Attorneys General, Washington, D.C.; telephone: (202) 624-5454.

According to Ms. Blau, states that elect their attorneys general usually require that the candidates be lawyers and United States citizens; some require two to ten years' residency in their states, and some two-thirds of all states require that attorneys general be of a minimum age. In thirty-seven states, candidates for attorney general must have passed the state bar examination.

The method used in New Jersey in selecting attorneys general and district attorneys is closest to that used in Alaska. As in this state, both attorneys general and district attorneys are appointed rather than elected; the major difference in New Jersey is that the district attorneys are appointed by the governor, rather than by the attorney general, and are subject to approval by the state senate.

Voters in Pennsylvania recently amended their state constitution to allow election, rather than appointment, of their attorneys general. After the constitutional change, a committee of interested attorneys, legislators and other citizens was appointed to decide how best to make the change smoothly. The elected attorney general may serve two consecutive terms of four years each; the election is held in the middle of the gubernatorial term.² The constitutional change in Pennsylvania broadened the attorney general's prosecutorial powers. Also, Ray Zimmerman, the state's first elected attorney general, was a district attorney before his election as attorney general. The new attorney general has made a commitment to cooperating with locally-elected district attorneys in investigations and prosecutions. Like his counterparts in several other states, Mr. Zimmerman has established a special office that helps local prosecutors with their investigations.

In the eastern states of Delaware and Rhode Island, attorneys general are solely responsible for prosecution of all criminal and civil cases, just as is the Alaska attorney general. The National Association of Attorneys General presumes that the two states do not have separate local district attorneys because the states are so small.

The attorney general in Ohio has no prosecutorial duties at all, even in instances of appealed criminal convictions. The attorney general in Ohio thus has little contact with the district attorneys, who are elected locally.

²Robert Gentzel, Assistant Press Secretary, Office of the Attorney General, Harrisburg, Pennsylvania; telephone: (717) 787-3391.

Representative Barnes
January 28, 1982
Page 3

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³Tom Hinton, National District Attorneys' Association, Virginia; telephone: (703) 549-9222.

Representative Barnes
January 28, 1982
Page 4

Mr. Hinton has sent us a copy of his organization's 1979 review of all states' methods of selecting district attorneys. When these materials arrive we will forward them to your office.

Please call on us if we can be of further assistance.

LL:dlp

MEMORANDUM

TO: Representative Rick Lehling
FROM: Bill Lovell, Staff ~~WLO~~
DATE: May 27, 1983

RE: Attached letter

Your office received the attached letter and revised fiscal note from Senator Fischer's staff this afternoon.

We could request a new fiscal note from some other source if you want.

/wtl

Non-salary costs include anticipated space rental of 6,000 sq. ft. for the additional staff of 34, 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, \$5,000 for personnel system printing, and \$20,000 for a data processing program to maintain EEO statistics. Word processors will cost \$14,500 each for a total cost of \$48,000. Records management equipment include storage devices and microfilm/graphics equipment totalling \$75,000. Duplication equipment will cost approximately \$150,000. DP terminals for both the DP section and the timekeeping section will cost \$50,000. Data processing computer-time should be at \$150,000 per year and an additional \$150,000 is included to maintain and enhance the department's work management, timekeeping, opinion indexing, Westlaw and PROMIS systems.

The total additional cost of \$2,412,921 is an enormous increase over the department's current administrative overhead of \$449,800 projected for FY 84. It is, however, part of the price that must be paid if the proposal to have an elected attorney general is adopted by the electorate during the 1984 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 a proliferation of special 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 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 1983 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 \$1.0 million annually, within just a few years.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: CSSSHJR No. 7(Judiciary)
 Title: "...election of the Attorney General."
 Sponsor: House Judiciary (Orig.-Uehling)
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category: Affected: General Govt
 BRU, Program of Subprogram(s) Affected
Legal Services, Administrative Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

GENERAL FUND			*	*	*	*
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME			*	*	*	*
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

* Because expenditures would not begin until the latter part of FY 85, actual costs cannot be determined at this time. Please see Analysis.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues Director

Phone: 465-3672

Division: Administrative Services Division

Date: May 26, 1983

Approved by Commissioner: Norman C. Gorsuch, Attorney General

Date: May 26, 1983

Department: Department of Law

Distribution:

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

CSSSHJR No. 7 (Judiciary)
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. 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.

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. In addition, it is more than likely that attorney timekeeping would be required throughout the Civil Division because most client agencies would not share the same priorities and program goals of an elected attorney general and they would undoubtedly insist that all interagency-funded legal services provided on their behalf be accurately documented and fully substantiated.

Additional costs, expressed in FY 83 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 determine a department's freedom of action.

<u>Function</u>	<u>Positions</u>	<u>Salary/ Benefits</u>	<u>Other Position Costs</u>	<u>Total</u>
Director's Office				
	(1) Budget Analyst R19		Travel 2,500	
	(1) Admin. Officer R17		Contractual 24,100	
	(1) Clk. Typist R8		Commod.-ongoing 5,400	
			Commod.-one-time 4,500	
			Equip.-one-time 18,100	
	(3)	113,805	54,600	168,405
Personnel				
	(1) Personnel Mgr. R21		Travel 2,500	
	(2) Personnel Analysts R16		Contractual 54,200	
	(1) Training Officer R18		Commod.-ongoing 14,400	
	(2) Personnel Tech.'s R12		Commod.-one-time 12,000	
	(1) Payroll Clerk R10		Equip.-one-time 24,100	
	(1) Clk. Typist R8			
	(8)	255,307	107,200	362,507
Property/Supply				
	(1) Materials Mgr. R21		Travel 2,500	
	(1) Purchasing Agent R18		Contractual 19,600	
	(1) Supply Officer R16		Commod.-ongoing 7,200	
	(1) Clk. Typist R8		Commod.-one-time 6,000	
			Equip.-one-time 19,300	
	(4)	161,843	54,600	216,443
Finance/Accounting				
	(1) Finance Officer R21		Travel 2,500	
	(1) Acct. Supervisor R16		Contractual 19,900	
	(1) Acct. Clerk R10		Commod.-ongoing 5,400	
			Commod.-one-time 4,500	
			Equip.-one-time 3,600	
	(3)	120,427	35,900	156,327

Attorney Timekeeping

(1) Accountant R18		Travel	1,800	
(3) DP Clerks R11/R9		Contractual	33,000	
		Commod.-ongoing	7,200	
		Commod.-one-time	6,000	
		Equip.-one-time	16,000	
(4)	111,023		64,000	175,023

Records Management

(1) Records Analyst R18		Travel	1,800	
(1) Records Supervisor R15		Contractual	81,200	
(1) Records Handler R12		Commod.-ongoing	9,000	
(2) Microfilm Operators R10/R14		Commod.-one-time	7,500	
		Equip.-one-time	81,000	
(5)	180,432		180,500	360,932

Data Processing/Communications

(1) DP Mgr. R21		Travel	2,500	
(1) Programmer Analyst R18		Contractual	319,900	
(1) DP/Comm. Sys. Supvr. R18		Commod.-ongoing	5,400	
		Commod.-one-time	4,500	
		Equip.-one-time	41,600	
(3)	142,116		373,900	516,016

Duplication Svcs.

(1) Duplication Mgr. R19		Travel	1,000	
(1) Printing Tech. R17		Contractual	74,500	
(2) Machine Operators R12		Commod.-ongoing	57,200	
		Commod.-one-time	6,000	
		Equip.-one-time	154,800	
(4)	163,768		293,500	457,268

TOTAL

(34)	1,248,721		1,164,200	2,412,921
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*Little History on
A-G's.*

Honorable Vic Fischer
Senator

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The Attorney General is appointed by the Governor in six states, three territories and the Commonwealth of Puerto Rico. In Maine, the Attorney General is selected by the Legislature while Tennessee's Attorney General is selected by the Supreme Court of that state. Historically, the Attorney General has been an appointive, rather than elective, official. In England, he was appointed by the Crown and only incidentally acquired elective status through a seat in Parliament. In Colonial America, Attorneys General were usually appointed by the Governor of the Colony. The Attorney General of the United States still serves at the pleasure of the President with the advice and consent of the Senate.

In response to your question on use and cost of additional counsel for the executive branch in states having elected attorneys general, 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 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 advisors, 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. Nevertheless, all but two of the legal advisors reported that they seek informal opinions for the Governor from the Attorney General. 2/

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

Honorable Vic Fischer
Senator

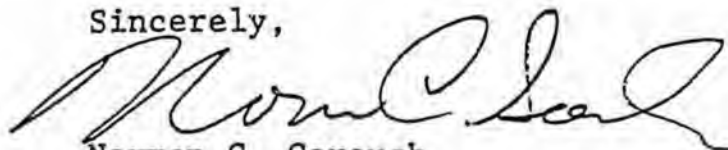
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While I cannot estimate the actual use and cost of additional counsel to oversee the elected Attorney General on behalf of the Governor, I am convinced there will be some additional use by the Governor's office even in the best of times. I sadly regret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

In addition, the heads of executive departments will hire their own attorneys. Thus, there will be a proliferation of special 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 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. Thus, the courts and the public will be confused about state policy on many issues. In addition, the cost for such counsel could easily exceed \$1.0 million annually, within just a few years.

As always, I would be delighted to answer any additional questions you may have.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:vrh

Attachment

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

May 26, 1983

The Honorable Vic Fischer
Senator
Chairman, Senate State
Affairs Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Elected AG

Dear Senator Fischer:

You have requested that the Department of Law respond to several aspects of CSSSHJR 7 (Jud). In particular, you have made inquiry regarding:

1. The fiscal impact CSSSHJR 7 (Jud) would have on state government operations;
2. A statement of my position on the proposed legislation;
3. Information on the pattern of elected attorneys general compared to appointed attorneys general in the United States;
4. Information on increased costs associated with utilizing "in-house" counsel for the executive agencies in addition to the elected attorney general.

Attached is a fiscal note and fiscal analysis prepared by my office with respect to CSSSHJR 7 (Jud). As with all fiscal notes, this represents a good faith estimate of the likely increase the proposed legislation would have on the operating budget. In preparing this fiscal note we used conservative estimates of the probable costs an elected attorney general would encompass. If anything, the costs may be higher.

I personally am opposed to CSSSHJR 7 (Jud). 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 a complete election of all commissioners.

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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. In our vast state, with disparate interests and citizens, the administration of state government requires a strong governor. 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 officials can lead to a less responsive state bureaucracy with a diffuse accountability 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. 1/

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

You also requested comparative information on elected versus appointed attorneys general. Our research indicates that the Attorney General is popularly elected in forty-two states.

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

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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. Nevertheless, all but two of the legal advisors reported that they seek informal opinions for the Governor from the Attorney General. 2/

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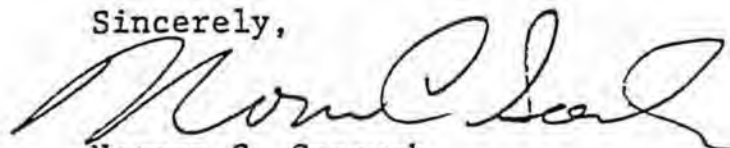
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As always, I would be delighted to answer any additional questions you may have.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:vrh

Attachment

Subject: Attorney General

on a matter that is far removed from Convention business.

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

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

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

CHIEF CLERK: One, I think.

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

V. RIVERS: I have an amendment.

PRESIDENT EGAN: You have an amendment by the Committee?

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

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

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

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

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

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

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

HARRIS: I second the motion.

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

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

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

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

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

PRESIDENT EGAN: Mr. Harris.

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

PRESIDENT EGAN: Mr. McLaughlin.

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

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

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

PRESIDENT EGAN: Mr. Victor Rivers.

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

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

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

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

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

MCLAUGHLIN: I think that is so, yes.

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

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

PRESIDENT EGAN: Mr. Taylor.

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

PRESIDENT EGAN: Mr. Davis.

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

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

PRESIDENT EGAN: Mr. Ralph Rivers.

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

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

PRESIDENT EGAN: Mr. Londborg.

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

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

PRESIDENT EGAN: Mrs. Nordale.

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

R. RIVERS: Yes.

PRESIDENT EGAN: Mr. Buckalew.

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

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

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

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

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

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

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

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

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

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

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

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

HARRIS: I request a roll call.

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

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

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

Rosswog, Smith, Taylor, VanderLeest.

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

Absent: 1 - McNealy.)

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

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

R. RIVERS: I have an amendment.

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

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

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

RECESS

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

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

PRESIDENT EGAN: No, it has not been introduced.

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

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

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

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

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

Subject: Election of AG.

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

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

PRESIDENT EGAN: Between Section 13 and Section 14?

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

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

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

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

BARR: I move the adoption of this amendment.

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

KNIGHT: I'll second the motion.

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

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

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

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

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

PRESIDENT EGAN: Any further discussion? Mr. Marston.

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

PRESIDENT EGAN: Mr. Hellenthal.

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

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

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

PRESIDENT EGAN: Mr. McLaughlin.

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

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

PRESIDENT EGAN: Mr. Barr.

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

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

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

PRESIDENT EGAN: You may, Mr. Stewart.

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

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

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

McLAUGHLIN: That's right.

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

PRESIDENT EGAN: Mr. Ralph Rivers.

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

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

PRESIDENT EGAN: Mr. Robertson.

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

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

BARR: Mr. President, may I close now?

PRESIDENT EGAN: You may, Mr. Barr.

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

PRESIDENT EGAN: Mr. Hellenenthal.

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

PRESIDENT EGAN: No, that rule failed of passage.

HELLENTHAL: Oh, I see.

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

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

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

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

Absent: 3 - Coghill, VanderLeest, Wien.)

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

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

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

MCCUTCHEON: Point of order, Mr. President.

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

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

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

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

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

Alaska State Legislature

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THE STATE LEGISLATURE IN COURT

Representative Terry Martin

In most states, the legislature relies exclusively on the state attorney general for legal representation. In fact, state laws often require this. However, because the Attorney General in Alaska is appointed by the Governor rather than elected by the people, our legislature must often turn to private counsel for advice and guidance when conflicts arise with other branches of government.

Today in Alaska, there is major concern as to how the Legislature may address confrontations with other agencies of State government. It is most logical to look to our Courts. But, as every citizen knows, litigation is expensive. Thus the Legislature must appropriate money for lawsuits, especially when there are differences in interpretation of our Constitution.

Although the Sheffield administration opposes the appropriation of State funds for hiring lawyers to represent the Legislature, two years ago a precedent was set for this type of action. At that time the Legislature took to court--and won--a dispute between the Legislative and Executive branches over powers of appropriation. Ironically, the law firm hired by the Legislature to defend that action was Ely, Guess and Rudd, which was then the firm of the current Attorney General. So the same person who previously received Legislative appropriations for legal work is now stating his concern about the legality of such appropriations.

Is the current lawsuit necessary? Perhaps the questions should be, "Is a citizen, once elected to public office, any less protected under the Constitution, and any less deserving of his guaranteed inalienable rights, than the average citizen?" Was it proper to arrest and forcibly detain legislators simply because they chose not to attend a meeting?

Article I, Section 7 of the Constitution of the State of Alaska, states, "...The right of all persons to fair and just treatment in the course of the legislative and executive investigations shall not be infringed." What crime was committed by those legislators arrested by order of the Governor?

Article I, Section 13: "The privilege of the writ of habeas corpus shall not be suspended..." This is every citizen's basic protection against illegal restraint or detainment in another's custody. By what conceivable authority was this Constitutional right denied the arrested legislators?

As an elected official, I have sworn to uphold the Constitution of this State. I will go to the defense of any person, including a legislator, who is arrested illegally.

In Alaska, the Legislature is vulnerable to Executive power when trying to defend its stands. Legislators cannot depend on the Attorney General, for that is a position appointed by the Governor. The Legislature does not have an established legal counsel to defend its actions, as other states do. So the Legislature must be prepared to use the courts as a sword as well as a shield to assure that its rights as an equal branch of government are protected.

There was intended to be a healthy exchange among the Legislative, Executive and Judicial branches of government. Fighting in the Legislative chambers and arrests in the halls of the Capitol over conflicts of

interpretation of the Constitution can be extremely destructive. The courts are the logical place to settle these disputes.

If the Governor is ready to arrest legislators in order to force compliance with his desires, what is to prevent him from arresting any citizen to force that person's attendance whenever the Governor wants an audience?

I recall reading about a judge in another state who did not have enough jurors to hear a case. The judge felt that the case should be heard without delay, so he directed his bailiff to go out into the street and bring back people to sit on the jury. The bailiff did just that. Without a summons or any kind of notice, people were arrested--in a supermarket, at stop lights, even two men on the street who were obviously drunk. Of course, these citizens challenged the judge's right to arrest them and force them to be jurors. As you would expect, the people won their suit. But this is a good example of how power can be twisted and abused by one person who feels that his priorities must be met, even at the expense of the rights of others.

If the Governor feels that legislative confirmation of his cabinet appointments is an unfair requirement, he should introduce legislation to bring the issue to a vote by the people. This is the proper way to bring about changes to the Constitution. The chances are good that such an amendment would be strongly supported by voters. Many people with whom I've spoken take this position, stating that the Governor should sink or swim by his own actions and his own people, without involving the Legislature. I happen to agree. This would enhance the separation of powers between the two branches of government, and help reduce some of the tension and abuse of power that we have witnessed.

In any case, the only place to reasonably and finally decide whether the Governor acted within the bounds of our Constitution is in the Courts.

CHAPTER 7

AND NOT ONE FOR THE PEOPLE

In a recent presentation by President Bush, a chart from his Council on Competitiveness showed the current number of lawyers per 100,000 population: USA, 281; Germany, 111; United Kingdom, 82; and Japan, 11.

In Alaska, according to the Alaska Bar Association, there are 2,072 licensed attorneys in this state. Over three-fourths of these attorneys, or 1,566, live in Anchorage. The ABA has no information on how many paralegals there are in Alaska, except to say there as many as there are licensed attorneys.

In most states, the legislature relies exclusively on the state attorney general for legal representation. In fact, state laws often require this. However, because the Attorney General in Alaska is appointed by the Governor rather than elected by the people, our legislature must often turn to private counsel for advice and guidance when conflicts arise with other branches of government.

Today in Alaska, there is a major concern as to how the Legislature may address confrontations with other agencies of state government. It is most logical to look to our Courts. But, as every citizen knows, litigation is expensive. Thus, the Legislature must appropriate money for lawsuits, especially when there are differences in interpretation of our Constitution.

Although past administrations have opposed the appropriation of state funds for hiring lawyers to represent the Legislature,

during the Sheffield administration a precedent was set for this type of action. At that time, the Legislature took to court, and won, a dispute between the Legislative and Executive branches over powers of appropriation. Ironically, the law firm hired by the Legislature to defend that action was Ely, Guess and Rudd, which was the firm of the existing Attorney General. So the same person who previously received Legislative appropriations for legal work was then stating his concern about the legality of such appropriations.

Was that lawsuit necessary? Perhaps the questions should be, "Is a citizen, once elected to public office, any less protected under the Constitution, and any less deserving of his guaranteed inalienable rights, than the average citizen?" Was it proper to arrest and forcibly detain legislators simply because they chose not to attend a meeting?

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There was intended to be a healthy exchange among the Legislative, Executive and Judicial branches of government. Fighting in the Legislative chambers and arrests in the halls of the Capitol over conflicts of interpretation of the Constitution can be extremely destructive. The courts are the logical place to settle these disputes.

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I recall reading about a judge in another state who did not have enough jurors to hear a case. The judge felt that the case should be heard without delay, so he directed his bailiff to go out into the street and bring back people to sit on the jury. The bailiff did just that. Without a summons or any kind of notice, people were arrested—in a supermarket, at stop lights, even two men on the street who were obviously drunk. Of course, these citizens challenged the judge's right to arrest them and force them to be jurors. As you would expect, the people won their suit. But this

is a good example of how power can be twisted and abused by one person who feels that his priorities must be met, even at the expense of the rights of others.

If the Governor feels that legislative confirmation of his cabinet appointments is an unfair requirement, he should introduce legislation to bring the issue to a vote by the people. This is the proper way to bring about changes to the Constitution. The chances are good that such an amendment would be strongly supported by voters. Many people with whom I've spoken take this position, stating that the Governor should sink or swim by his own actions and his own people, without involving the Legislature. I happen to agree. This would enhance the separation of powers between the two branches of government, and help reduce some of the tension and abuse of power that we have witnessed.

In any case, the only place to reasonably and finally decide whether the Governor acted within the bounds of our Constitution is in the Courts.

Subject: Attorney General

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

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

METCALF: May I ask Mr. Rivers a question?

PRESIDENT EGAN: You may, Mr. Metcalf.

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

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

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

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

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

V. RIVERS: It is merely an assumption.

PRESIDENT EGAN: Mr. Metcalf.

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

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

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

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

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

BUCKALEW: Objection.

DOOGAN: Point of order.

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

KNIGHT: I second the motion.

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

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

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

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

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

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

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

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

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

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

PRESIDENT EGAN: Mr. Taylor.

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

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Metcalf be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "noes" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 16? If not, are there amendments to Section 17? Amendments to Section 18? Mr. Sundborg.

SUNDBORG: Mr. President, I have an amendment.

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

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

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

R. RIVERS: I second the motion.

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

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

6. SELECTION, TERM AND REMOVAL

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

Method of Selection

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

Now elected

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

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

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

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

TABLE 6: SELECTION AND TERM OF ATTORNEYS GENERAL

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

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

A study published in the Law Library Journal⁸⁸ showed how methods of selecting Attorneys General developed in nineteen states; of these, eight provided for legislative selection prior to 1843, but none finally retained this method. Prior to 1845, twelve states provided by constitution or legislation for the appointment of an Attorney General by the Governor, the legislature, or other authority. The trend then turned toward election. For example, North Carolina's 1776 Constitution provided for appointment by the legislature; its 1868 Constitution provided for election. Louisiana's 1812 Constitution provided for appointment by the Governor; its 1852 Constitution provided for election. Michigan's 1835 Constitution provided for appointment by the Governor; the 1850 Constitution provided for election. Virginia's 1776 Constitution provided for selection by the legislature; its 1902 Constitution provided for election. Kentucky's 1792 Constitution provided that the Governor would appoint the Attorney General, with the consent of the Senate; the 1850 Constitution made the office elective.

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

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

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

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

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

should be equipped with the constitutional status necessary to exercise constructive leadership as the chief lawmaker and political head of his state.⁸⁹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 6
ATTORNEYS GENERAL AND SECRETARIES OF STATE:
QUALIFICATIONS FOR OFFICE

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

N.A.—Not available.
(a) No secretary of state.
(b) Although there may be no specific requirement for minimum age of U.S. citizen, it can be inferred that the individual must be 18 years old and a U.S. citizen since he or she must be a qualified voter. In addition, some states have residency requirements to be a qualified voter and these can be found in the table "Qualifications for Voting."
(c) No statute specifically requires this, but the State Bar Act can be construed as making this a qualification.
(d) Implied.

(e) Implied, since the attorney general must represent the state in all legal matters and, therefore, must be an attorney. To be an attorney in Nebraska and Puerto Rico, one must be at least 21 years old.
(f) Implied, since the attorney general must be a practicing attorney and to be an attorney in New Jersey, one must be at least 18 years old.
(g) These qualifications took effect for the first time with the attorney general entering office in 1981.
(h) Must be admitted to practice before highest court of a state or territory.

other
Alabama
Alaska(c)
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Hawaii(c)
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania(g)
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
West Virginia
Wisconsin
Wyoming
American Samoa
Puerto R.
(a) to
(b) D—
(c) No
governor
(d) AZ
(e) Ou

REPRESENTATIVE
TERRY MARTIN

DISTRICT 6
CHAIRMAN - LAND AND COMMERCE COMMITTEE
PHONE 463-3070



3960 REKA DRIVE - B6
ANCHORAGE, AK 99504
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DURING LEGISLATURE
POUCH V
STATE CAPITOL
JUNEAU, AK 99811
PHONE 465-3764

MEMORANDUM

February 23, 1983

TO: Representative Charlie Bussell
Representative John Liska
Representative Joe Hayes
Representative Ramona Barnes
Representative Hugh Malone
Representative Don Clocksin
Representative Ron Wendte

FROM: Representative Terry Martin *T.M.*

SUBJECT: SPONSOR SUBSTITUTE HOUSE JOINT RESOLUTION 7
Providing for Election Attorney General

I strongly recommend that as a member of the House Judiciary Committee you vote SSHJR 7 out of committee with a "do pass" recommendation.

In 1979 I introduced HJR 6, Providing for Election of Attorney General (copy attached) in the House of Representatives.

I believe passage of SSHJR 7 would eliminate conflicts arising from a Governor having control of a State Attorney General. The majority of Alaskans believe the Attorney General is to protect the public interest -- not only that of the Executive Branch of Government.

Attachment

bc: Rep. Rick Uehling

OUTLINE OF REMARKS

Attorney General Clarence A. H. Meyer

ATTORNEY GENERAL SHOULD BE ELECTED - NOT APPOINTED