

ALASKA CONSTITUTIONAL CONVENTION

January 17, 1956

FIFTY-SIXTH DAY

PRESIDENT EGAN: The Convention will come to order. We have with us this morning Reverend Orland Cary of the First Baptist Church. Reverend Cary will give our daily invocation.

REVEREND CARY: Our Father, we are grateful for this day and the opportunities that it presents to us. We are grateful that it has pleased Thee to give us a little part in the daily work that affects the people not only of this present time but in the generations that are to come. We pray, Lord, that as we plan our work that we may plan it wisely, that we may have the wisdom of God to direct us. We pray especially that Thy blessing shall be upon the men and women that are at work today in this Convention, shaping and forming the policies that shall be important in determining the lives of our children and those that shall come after us. These things we ask for Jesus' sake. Amen.

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll.)

CHIEF CLERK: Three absent.

PRESIDENT EGAN: A quorum is present. The Convention will proceed with its regular order of business. Does the special Committee to read the journal have a report to make at this time?

DOOGAN: No report until after lunch.

PRESIDENT EGAN: The report will be held in abeyance. Are there reports of standing committees? Of select committees? Are there any motions or resolutions? Are there any communications from outside the Convention? If not, we are now down to our unfinished business which is -- Mr. Hilscher?

HILSCHER: Mr. President, I would like to ask the privilege of the floor for a moment.

PRESIDENT EGAN: If there is no objection, Mr. Hilscher.

(Mr. Hilscher spoke under personal privilege at this time.)

PRESIDENT EGAN: We now have before us Committee Proposal No. 9. Mr. Nerland.

NERLAND: Mr. President, after conferring with the Chairman of the Rules Committee, it appears that the work on two sections,

which has been held for further consideration, this proposal as well as some other committee work could well be accomplished at this time, so I will move and ask unanimous consent that we set a recess until 10:10.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess. Mr. Hellenthal.

HELLENTHAL: Would it be possible to proceed with the reading of the next report and its explanation during this interval so that we can keep pushing forward?

PRESIDENT EGAN: The only thing, Mr. Hellenthal, there will be quite a number of delegates off the floor, not only from the Finance Committee, but also from the other committees. The two sections that are referred to, the Chair understands that the Committee has a rewrite, and perhaps this one recess might put all the committees into shape where we won't have to have many long recesses in the future, but it wouldn't be very well to have the full explanation where 8 or 10 of the various committee members are off the floor and then have to go through it again, probably when they came back on the floor. Mr. Davis.

DAVIS: Mr. President, as an alternate, might it not be possible to read and explain the next section which is coming up? Just defer any action at all, at the minute, on the present Proposal No. 9, and then on the noon recess, let them work on their No. 9. Possibly we wouldn't lose any time at all of the Convention that way.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Your Committee on Administration has several things that can be taken up and it would be a pleasure to have that time for us to get caught up on our administration report.

JOHNSON: Point of order, Mr. President.

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

JOHNSON: Is the motion to recess debatable?

PRESIDENT EGAN: No, it isn't debatable but under the circumstances, it coming at this time that is unusual, the Chair felt that each delegate should know why the recess was being asked. Is there objection to the unanimous consent request that the Convention stand at recess for one hour? Mr. Sundborg.

SUNDBORG: Mr. President, if there is a recess, the Committee on Style and Drafting will meet at the rear of the gallery.

PRESIDENT EGAN: If there is a recess the Committee on Style and Drafting will meet at the rear of the gallery. Mr. Smith.

SMITH: Mr. President, the Committee on Resources will have a meeting in one of the committee rooms upstairs.

PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: How long is this recess going to be?

PRESIDENT EGAN: It will be called for one hour.

ROSSWOG: The Local Government Committee will meet at 10:00 a.m.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: All the available members of the Ordinance Committee will meet immediately upon recess, upstairs.

NERLAND: Mr. President, the Finance Committee will meet in the committee room upstairs.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, your Committee on Administration will meet immediately upstairs.

PRESIDENT EGAN: If there is no objection then, the Convention will stand at recess until 10:10 a.m. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Doogan, do you have a report of the special Committee to read the journal?

DOOGAN: On the 49th day, January 10, the only correction I have is on page 11, fourth paragraph from the bottom, second line after "Section 6", insert "presented the previous day". I move and ask unanimous consent that the journal be approved as corrected.

PRESIDENT EGAN: Would you read the proposed correction once more, Mr. Doogan?

(Mr. Doogan read the correction again.)

PRESIDENT EGAN: Mr. Doogan asks unanimous consent that the journal of the 49th day be approved with the correction as suggested by the committee. Is there objection? Hearing no objection, the journal for the 49th day is ordered approved as corrected by the Committee to read the journal. We have before us Committee Proposal No. 9, in second reading. Mr. Nerland.

NERLAND: Mr. President, the Committee has a proposal which has been mimeographed and is on the Clerk's desk that I would like to present at this time.

PRESIDENT EGAN: The Chief Clerk will please read the proposed Committee amendment to Committee Proposal No. 9.

CHIEF CLERK: "Section 7, page 2, strike lines 25 and 26 and insert in lieu thereof the following: 'Section 7. The proceeds of any state tax or license or part thereof shall not be allocated to any special purpose,'."

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

NERLAND: I move for the adoption of this amendment and ask unanimous consent.

MCNEALY: I object for informational purposes.

PRESIDENT EGAN: Objection is heard, for informational purposes.

KNIGHT: I'll second it.

PRESIDENT EGAN: You so moved, did you not?

NERLAND: Yes.

PRESIDENT EGAN: Mr. Knight seconds the motion. Mr. McNealy.

MCNEALY: Mr. President, the objection I made was only for purpose of inquiry about the use of the word "license". Would that, in effect, prevent the allocation of license money for, say for example, the game commission only?

WHITE: Mr. McNealy, you have to read further. The first two lines on the next page goes on to say, "...except where state participation in federal programs will thereby be denied." Now in the case of the Dingell-Johnson or Pittman-Robinson federal bills which allocate to the various states funds for the uses set forth in those bills, provided the state earmarks in turn certain licensed revenues, would come under the meaning of that qualification. Does that answer your question?

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: This probably is looking ahead too far, but in the event that the federal program were discontinued, then this licensed money could no longer be allocated for these special purposes?

WHITE: That is correct.

MCNEALY: Mr. President, I'll withdraw my objection.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, this being a new amendment, I would like the privilege of asking a question on it.

PRESIDENT EGAN: You may ask your question, Mr. Hurley.

HURLEY: There has been some talk, in fact I think presently in the Territory it is done, that a portion of the proceeds received from a given tax is refunded or kept by the person who collects the tax for the purpose of defraying the cost of administration and collecting the tax. There has been some consideration given to doing the same thing with the net income tax. It looks to me as if this would prohibit the utilization of any of the proceeds of the tax for defraying part of the cost of collecting that tax if the legislature so chose to make provisions therefor. Was that considered?

WHITE: I'm not sure if I understand your question, but if I do, it seems clear to me that the cost of collecting any tax is deducted before you arrive at the proceeds of the tax. The proceeds would then be more or less a net after the cost.

PRESIDENT EGAN: Mr. Smith.

SMITH: I would like to ask a question if I may, Mr. President.

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

SMITH: Was it the Committee intention that this wording should be read in conjunction with the last sentence of this section, also?

WHITE: The last sentence of the section remains in the section by a majority vote of the Committee.

SMITH: And the same answer would be made here as was made to Mr. McNealy's question? I simply want this for clarification in the record.

WHITE: Now, this is a little different. The last sentence provides for the continuation at the will of the legislature.

"Any allocation for special purpose" or, in other words, earmarking that now exists. That is not dependent on any federal programs.

SMITH: But the legislature still would be able to make provisions where any allocation that now exists, that allocation could be continued. Is that correct?

WHITE: Under this sentence any present allocation could be continued or discontinued at the will of the legislature.

SMITH: That answers my question.

PRESIDENT EGAN: Mr. Armstrong.

ARMSTRONG: Mr. President, I was going to ask Mr. White if this conflicts with some of the proposals that have been brought before the delegates in regard to a special commission on wildlife, where it is their proposal that funds be set aside solely for the operation of that department.

WHITE: This does conflict with the -- I don't have that proposal in front of me -- suggestions made in that proposal, in that this limits earmarking of such licenses in the case where it is necessary to participate in federal programs, where as I understand their suggestion, they want all licenses, fees, and other revenues deriving from the fish and game field, to be earmarked whether or not it is necessary to participate in federal programs. So this is at variance with that proposal.

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Davis.

DAVIS: Mr. President. Mr. White are you answering questions on this one?

PRESIDENT EGAN: If there is no objection, Mr. Davis, you may ask Mr. White a question.

DAVIS: I read the memorandum that was distributed yesterday and one of the suggestions was that this be broadened to allow setting aside special funds for sinking funds for paying bonds and that sort of thing. Now I wonder if you have taken care of that with the language you have used here. Supposing the state should bond. It appears to me on the language that you have used, you have prevented setting up a sinking fund to pay the bonds. Am I wrong on that?

WHITE: Mr. President. In answer to your question, Mr. Davis, this suggested committee change came about because under the old language where it said, "All revenues shall be deposited without allocation..." we ran into a situation where we had listed seven exceptions that we were afraid we were going to have to make. By going to the tax itself and saying that the tax shall not be earmarked, we eliminated all seven of those exceptions. Now in this case the sinking funds for bonds, all this prohibits is the earmarking of any special tax to that sinking fund. You could still set up a sinking fund from the general fund or the state treasury.

DAVIS: That answers my question.

PRESIDENT EGAN: Mr. Emberg.

EMBERG: I would like to ask you a question, too, Mr. White. I notice under the language of this section, the federal funds that are available for the benefit of game and sports fish are provided for under the qualification that federal programs are available. Now as commercial fishermen, they have, to my knowledge, no federal funds set up so that it will not be possible to allocate the commercial fishing licenses to a program of research or help for the commercial fisheries. I don't think I will make too much of an issue of this. It's going to throw the only hope for finances for the rehabilitation and for the necessary research for the commercial fisheries in the hope that we can get some money out of the general fund. Now I want that clear in the record, that this is in a way discriminatory against the commercial fisheries and they are in trouble as everyone knows.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. Emburg, the Committee's idea here is to prevent earmarking for anybody except in the case outlined where state participation in federal programs would thereby be denied. That is something over which we have no control and we would further compromise as set forth in the second paragraph, "The existing earmarked funds will be allowed to remain at the will of the legislature." I think I can speak for the majority of the Committee in saying that you can go on making exceptions to this for deserving groups ad infinitum. But the Committee feels that if you accept the principle of not earmarking, it puts everyone in the same position and that the legislature will then be in the position being able to decide each case on its merits. If you go the other route and allow for earmarking or start drawing up all the exceptions that everybody would want to have drawn up, you are then back to the situation that most states now find themselves in, where an ever-increasing percentage of their revenues are earmarked for special purposes and an ever-decreasing amount is available to the general fund. To arrive at the position Texas is in, for example, where 90 per cent of all their funds are earmarked and the legislature has only 10 per cent left to work with, and the further disadvantage is the fact that as these earmarked funds get set up and get embedded in your economy, boards to administer them get set up and the legislature loses control that it should have over the workings of the state government. So the Committee would suggest that the Convention accept the idea of preventing earmarking or reject it.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, may I add to that a little?

PRESIDENT EGAN: You may, Mr. Barr.

BARR: On this list I have, there are nine presently earmarked

funds. Most of them bring in very small amounts, but the commercial fishing license is now earmarked. Perhaps Mr. Nolan could tell more about that but as I remember, it was 60 per cent that goes toward sick and disabled fishermen's fund. Is that right, Mr. Nolan?

NOLAN: That is just the fisherman's license that he pays individually.

BARR: Yes, the commercial fishermen's licenses.

PRESIDENT EGAN: Is there further discussion? Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I appeared before the Committee on this and heard the discussions pro and con. Now we have had a very brief discussion on the merits of earmarking as against the merits of earmarking and I stated that I did not have any particular objection to the matter of earmarking taxes. The question of earmarking licenses has raised a considerable question in my mind. I do know this, from when I served in the legislature, that general funds which have to be appropriated for certain special purposes every session, often suffer in interest of the general operating expenses of the government. I do know that unless you have had a fair share of earmarked funds for special certain purposes, particularly public works and construction works and improvements, that you often times do not get them. Now the example of Texas has been cited here as one having a lot of earmarked funds. I might also say that they probably have some difficulty in the matter of what is left for their general appropriations. I might also say that in driving through Texas they have probably the highest degree of physical development in the matter of public buildings -- school houses, roads, airfields -- than any other state in the union. So there are advantages as against disadvantages. Now I got the impression that some members of the Committee were very strongly against earmarking and, in the general sense, I also have been that way. However, including of licenses here in the constitution as an exclusion from the earmarking it, seems to me to be just a little bit too broad. Getting back to matters of personal interest, at the present time I sit on a board which is the Engineers' and Architects' Board which the licenses for that particular service, part of them go into the board fund and part of them go into the general fund. I can readily see where other groups such as the fish and wildlife group in the matter of game and fish licenses and similar professional groups and others who pay a certain fee for just their own supervision and for their own particular purpose, might be somewhat seriously pampered by this clause "or licenses", but my thought was that we would hear from some member of the Committee who had strong convictions on this point and a fairly broad argument and discussion as to for or against the merits of earmarking both the taxes and licenses.

I am still not entirely convinced in my own mind that we should include licenses there from what we have heard. I do want to say that in the Territory in the past in order to avoid some difficulties in regard to a tax clause in the Organic Act, that we have called certain taxes by the name "license" just for the purpose of getting around or rather not having to comply with the terminology of the Organic Act. I can see here that perhaps in establishing the fish and wildlife service they might issue to each person, instead of a license, a certificate of convenience; charge them for that service and cover that into a fund. It might then avoid the term "license". In the same breath I would still like to hear from some of the strong proponents of this on the Committee as to their research in the matter of why their convictions are so strong and what the experience has been in more states than just the State of Texas. I would like the pro and con to everything and the experience of Texas shows that while they have a problem in one respect they have benefited in another and I think the members of the Committee that are convinced on this must have some strong arguments and I would like to hear them before making up my mind.

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

KING: In the event, as I understand it, in the repeal of the Pittman-Robinson Act and the Dingell-Johnson bill, which would provide these funds for the purpose as stated by Mr. Emberg for research not only in commercial fishing but for fish and game and covers the whole field, in case that was repealed this would then say that that license fee that we pay for our hunting and fishing licenses could not be earmarked for the use as intended now under the present law.

WHITE: That is correct. In the event the federal laws were repealed and it came under the meaning of this sentence, then the companion earmarked funds in the State of Alaska would no longer be earmarked.

KING: I wanted to be clear on that point.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. Chairman, I would like to ask Mr. White a question.

PRESIDENT EGAN: If there is no objection, you may.

GRAY: There is nothing in this article to preclude the legislature from appropriating to the particular body that amount of money that they have collected through the licenses. In their appropriation they could use these figures to appropriate that amount of money to the respective bodies.

WHITE: That is absolutely right, Mr. Gray. You appropriate

the exact amount that has been earmarked in previous years, year after year after year, it is just an automatic appropriation.

GRAY: That is the way I see it. It doesn't earmark it but the talking point that these organizations have for the use of this money that is rightfully theirs, why, they haven't been precluded, they just have to sell their viewpoint to the legislature and if they need the money, why they probably could get it if they could talk them into it.

WHITE: They have to sell their viewpoint along with everybody else. If I may while I am on my feet, Mr. Rivers, I am sure other Committee members could probably answer your question better than I, but I think in your discussion you pointed out one of the reasons why the Committee feels that licenses should be included in this section, because when you say that in the past, revenues have been defined as licenses to avoid the word "tax", you see what could happen if you deleted the word "license" from this section. Instead of imposing a tax you would impose a license which would then not come under the earmarking restrictions, so that that would be an out, a way around earmarking just as it has been a way around a uniformity clause, or anything else in the past. And, also, I would like to ask you in the case of the board upon which you sit, if it isn't the case where the funds that you retain that do not go into the general fund, aren't in the nature of expenses which you would be able to retain anyhow?

V. RIVERS: That is correct, and all money that is above expenses do go back into the general fund if there is any left over. I would like to ask Mr. White a question.

PRESIDENT EGAN: If there is no objection, you may.

V. RIVERS: Do you think by issuing a hunting certificate or a fishing permit, or something like that, that would then have gotten out from under the term "license"? I'm thinking in terms of, again, the idea that the funds derived from some special purpose might be brought out from under the term "license".

WHITE: I wouldn't want to qualify as a legal expert on the definition of words, possibly the term means something "license" does not.

V. RIVERS: What is your thinking then -- that permits and things of that nature for service charges would be under the term "license"?

WHITE: I'll defer to Miss Awes.

PRESIDENT EGAN: Miss Awes.

AWES: I think if this constitution limitation is adopted and then instead of passing taxes or licenses, the legislature started passing fishing permits and that sort of thing, I think the odds are all in favor of the court saying these are all licenses in fact, and bringing them within the restrictions of this section. I would at this time, if I may, like to make a few comments to Mr. Rivers' remarks of a minute ago. I am not one of those strong proponents who can just set forth a case one way or the other. I agree with Mr. Rivers that there are arguments on both sides. However, I think I might give a few indications of the Committee thinking at the time we adopted this proposal. The latest figures that we had before us, about 27 per cent of the funds of Alaska were earmarked and with the figure 27 per cent, I think Alaska was right among the lowest ranking with the states in the matter of earmarking. Then the states earmarked progressively more. Texas is the extreme example with 90 per cent. I think the majority of the states earmarked from around 50 per cent up to 75 per cent of their funds. I believe that it is Colorado or one of the Western states that ranks next to Texas with about 80 or 85 per cent earmarked. In theory I think that earmarking is bad; from an accounting standpoint it is bad. It is inefficient, undoubtedly, because it deprives the legislature of that adaptability that you get when you take a certain amount of money with no strings attached and allocate it without limitations. I think inefficiency is one of the big arguments against earmarking. I think the other one is that eventually you do get so many funds earmarked that the legislature just does not have the money to work with for current operating expenses. The chief arguments that were brought before us in the matter of allowing earmarking were, I think two: the one that Mr. Rivers brought out that certain things like capital improvements are more apt to be taken care of if you allow earmarking; and the other argument that is often given is that it is easier to pass along for a new tax if you allow earmarking. An automobile driver is more willing to pay an extra gasoline tax if he thinks he is going to have better roads as a result. The fisherman is more apt to pay a larger license tax without complaining if he thinks he is going to have improved harbors or retirement fund for his group. I think those are the main arguments for earmarking. The Committee felt, though, after seeing the extent to which earmarking is growing in the states and the impossibility of doing away with earmarking once you get it, that the advantage is weighed in favor of limiting earmarking and that is the reason that we adopted the provision that we did.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I am a little bit troubled by that statement that Mr. Gray made and which Mr. White said was correct, that there was nothing to prevent the legislature from appropriating the amount that did come in from a specific

purpose to that specific purpose. It seems to me that that is certainly poor compliance with the budgeting section of this same finance article and just because \$50,000 or \$60,000 comes in from some specific fund into some specific tax or license, let us say, I cannot think that it would be very sound practice for the legislature, without any reference whatever to the budget and the needs of that particular department, say we are going to turn that entire amount over to that particular department. It seems to me that it would completely nullify the benefits of a budgeting report, and as I understand the Finance Department which was recently created by our Territorial legislature and which I assume we will have a similar department under statehood, does go to considerable trouble to prepare a budget covering every function of government and if the legislature was in no sense bound by that and can just sit down and turned an entire fund to a particular activity, it seems to me that it is in conflict with your own provision covering the budget in this very proposal that you have produced.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: Mr. President, I just want to say very briefly here that I was in the minority when this question was being discussed in the Committee and I foresaw that it was going to be very controversial when it hit the floor, and my anticipation was correct. I do know that the earmarking of funds can be, perhaps, overdone as some of the experts have told us, and on our staff papers we read of such conditions. However, I think there are some benefits derived from such a program. In the Committee I used the argument of building of school houses which you get the funds from a cigarette tax. I can tell you of at least three that are now under construction from that setup which is a very good thing. Also, on the gas tax, and I understand in your area up here in some small communities it has been made possible to build little airstrips which is very good as I can see now for this particular section of Alaska. Down in our area, we require floats, and in some cases little strips of roads. So there are two advantages there. Now I do not say that we should go overboard and earmark all the revenue that we take in for the Territory but I think we are going to have to realize there is some good derived from such a program. Now I want to stick to the record on the fisheries benefit also. For years an attempt was made in the legislature in the Territory to bring, down documented boats under the Marine Act which entitles them to hospitalization. It was impossible to do that for the simple reason that they were undocumented and there were several attempts made to create some beneficial program for them, particularly the trollers could be taken care of like the men that work on the larger boats, and I think finally the compromise was the earmarking of this so-called fisheries tax. Now there is legal friction there also, but we have been told in the past that

the fisheries tax is not exactly a tax, it is a license fee. In fact, that argument has been presented in defense of the fish trap revenue, etc. For that reason I was satisfied with the language here. I figure that the compromise, that the allocations that are now in existence would be retained and this amendment here takes in the license and it seems to me that it should satisfy our trollers, etc., inasmuch as there is a question about interpretation of the meaning on whether it is tax or license fee. But I do think this amendment is all right and it will take care of the three major existing earmarked benefits as I see it.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, I want to go along with Delegate Rivers here and I am glad to know that there is a minority report on this Committee. Now I live out in Spenard and we pay lots of taxes, gas tax, and they are happy dollars going in there because we are going to get roads out there, we hope. We have happy dollars in that treasury because it is earmarked for roads and happy dollars are the best kind of dollars and there will be more dollars in there. I am going to go along on a kind of ballot deal. I would like to see half of our funds earmarked, not more than half and I hope that our taxes go to build roads. Am I correct on that or not?

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, point of order. Mr. Marston, as the committee proposal stands, even if you adopt the amendment that is before us now, the funds that are currently earmarked would remain in existence. The tobacco tax for school construction, the motor fuel tax of which you are speaking, would remain in existence. This committee proposal, as it stands, even with the amendment before us, does not seek to wipe out those earmarked funds.

MARSTON: That is what I wanted to make sure. I am very happy about that.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, in reference to the remarks of Delegate Hermann on the legislature appropriating a like amount for that particular department, it is true there is nothing to prevent the legislature from appropriating a like amount, there is nothing to prevent the legislature from wiping out the whole budget, there is nothing to prevent them from wiping out the whole Finance Department, and going back to an auditor and a treasurer as we had before, but they always consider the budget before making any appropriations. When the final appropriation bill comes out it is a compromise between the requests of all the different departments. I am sure they would never appropriate

a large amount for a certain department if it were more needed in some other department. They always take that into account, and in regard to the remark made by Delegate Marston, I have always fought for roads and airports especially, and also for schools and I agree with him, we just could not get a hold of too much money for those purposes, but I have also noticed that Delegate Marston has also fought for the Native people in Alaska and we don't have money to go around for everything and one of the great needs of the Native people is tuberculosis control, and aid to the blind, and new schools, as well as roads, etc. The health program demands an immense amount of money so, therefore, the legislature should have a fair-size sum in the general fund subject to appropriation for those purposes. I am afraid if we had 50 per cent of our funds earmarked, we would have practically nothing left for our health program and things of that sort.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I wish to offer an amendment to the amendment.

PRESIDENT EGAN: Mr. McNealy, you may offer your proposed amendment to the amendment. The Chief Clerk will please read the proposed amendment to the amendment. But before the Chief Clerk proceeds, the Chair would like to ask that if it is necessary for the delegates to communicate with each other while we are in session, it would be appreciated by many of the other delegates if you would not speak aloud at the time you communicate to each other while we are in session. The Chief Clerk may read the proposed amendment to the amendment.

CHIEF CLERK: "Strike the words 'or licenses' in the first line of the amendment."

MCNEALY: I move the adoption of the proposed amendment to the amendment.

PRESIDENT EGAN: Mr. McNealy moves the adoption of the proposed amendment to the amendment.

JOHNSON: I second the motion.

PRESIDENT EGAN: Mr. Johnson seconds the motion. Mr. McNealy.

MCNEALY: This matter has been pretty well discussed and I don't think this will take up much time of the body here. The only purpose for offering this is that we have the word here, which I have checked on, also, that about 27 per cent of the funds are now earmarked in the Territory and I believe that the license fees are not a big part of the income of the Territory as compared with the collection of the state taxes, and I

am speaking on this only from one point, thinking of the Game Commission and the fishing industry, the sports end of it as well as the commercial, and thinking that if the next Congress or any Congress in the future would withdraw this federal program, then it means that the funds from licenses will be no longer earmarked and I would like to go along with the thinking that we have heard from members, at least at the public hearing that was held here in Fairbanks, from the Tanana Valley Sportsmen Association where I think they spoke, in one respect, for all the sportsmen that none of us who like to hunt and fish would object to paying \$25 or even \$50 a year for a license if we knew those funds were earmarked for a special purpose, and I am afraid to trust -- in one point, the legislature may appropriate the amount of funds that would be required; on the other hand, the legislature might not acquire the amount of funds and in view of the fact that my opinion that the majority of licenses are already earmarked, could not affect this amendment too much; and the other is that licenses are a small amount of the total income of the state. As I say, there may be others, but speaking from my point of view, the sport fishing and hunting and the commercial fishing, I believe this should be struck out and the proposed amendment to the amendment should be adopted so that in the future we are not going to have difficulty in supporting these particular branches.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, may I address a question to Mr. White?

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

JOHNSON: I believe that you stated, Mr. White, that the present funds which were earmarked would remain in that category even though this committee amendment should pass. Is that correct?

WHITE: At the will of the legislature.

JOHNSON: Well now, that was the point I was getting at. The language used on page 3, lines 2 and 3 of this section says that, "This provision shall not prohibit the continuance of any allocation..." Is that a prohibition against the legislature from doing away with those earmarked funds?

WHITE: No, Mr. Johnson, we worded that so as to mean that the legislature could eliminate earmarking if they so desired but in the absence of any such action those earmarked funds would remain in existence.

JOHNSON: Then as a matter of fact there is no protection for the present earmarked funds? It is the will of the legislature?

WHITE: As a matter of fact, there is none. That is my understanding.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: I would like to know if the present business license fees and liquor license fees and things like that are presently refunded to cities, communities, what their status would be under this arrangement?

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. Hinckel, they are earmarked at the present time and, therefore, that would continue. While I'm on my feet, I would like to mention the amount of license fees at the present time. In the 1954-55 fiscal year, the total tax coming in was \$15,700,000; the amount of license fees including business licenses was approximately \$2,100,000. Two million out of \$15,000,000, I would say is a fair-sized amount. The greatest portion of that is earmarked right now, but there might be further licenses later on and that is what we would like to prevent earmarking on.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, after listening to all of this, I wonder, or I might ask the Committee this, has the discussion been such in Committee, that an earmarked fund, after reaching a certain percentage of surplus, anything over that percentage of surplus could then be reverted to the treasury so that an earmarked fund could never run away with itself such as the public school fund in Texas. I could go just a little bit further, a percentage, say possibly 50 per cent of the annual operating budget of that particular earmarked fund is used for, anything over 50 per cent surplus could be reverted to the treasury.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. Cooper, in our present law there is a limit set on the amount that shall be used for administrative purposes. There is no limit in the law, or in this provision, that limits the amount to be used for construction. I understand in some states their building funds just get fat, bigger than the general fund sometimes, but that would never be the case in Alaska. You have been around and you know how many roads we need. Five years ago it was quoted to me that it takes \$20,000 to build one mile of dirt road, not surface, and we have millions of square miles here. We have so many schools that are needed at the present time. Some villages are without any buildings and more than one-half of the buildings they have in the outlying districts are falling down right now and need replacing. I don't think that within the next 50 or 60 years we will ever get too much money for roads or school construction.

PRESIDENT EGAN: Miss Awes.

AWES: I would, if I may, like to make a little further comment on Mr. Johnson's question. He asked if, under this section, the legislature would still have the authority to abolish existing earmarked funds if they wished to do so, and that question was correctly answered. However, the reason for this section is that earmarking is one of those things that grows and grows and never dies and the earmarked funds that we have now have no constitutional protection but I think they are almost killed off as a practical matter. I would like to make a few more comments on the amendment that is now before us. I think the question is much more fundamental, much more basic than just the question of whether we will strike "or licenses". The question goes right to the heart of the matter. Do we want earmarking or do we not? Once you strike "licenses" and then you make this exception and that exception, and what it really amounts to is an admission that you really don't want to do away with earmarking. When this matter was discussed in Committee, I said that as long as we could limit earmarking I was for it, but as soon as there were exceptions being made, then I thought that we should show we wanted to continue earmarking and that a motion should be made to just strike the section and leave matters as they are now, and I still believe that is so. As soon as exceptions are made to this section, then I think the section should be stricken.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I have a question on this amendment. You have the two categories of earmarking that may continue. I will address this question to Mr. White. One is, those presently in existence and the other is, where prohibiting earmarking will deprive us of participating in a federal program which requires earmarking. Does the sports fishing and hunting license earmarking that exists now, would that be regarded as one of the things that is presently allocated and which would carry over, even if the federal government drops its matching requirements?

WHITE: Mr. Rivers, it is my understanding that those revenues are not now earmarked because we do not participate in the federal programs concerned. That is, by the way, one of the good arguments for statehood because if my understand is correct, it would entitle us to something in the nature of \$600,000 annually under those two acts, but those revenues on licenses are not now earmarked.

R. RIVERS: The federal government at the present time does require earmarking from the states, but they might carry out a program in the future whereby they will make an offer to match funds with the states but without requiring earmarking. In a case like that the legislature would have to do the matching

without the earmarking. Is that right?

WHITE: That is right.

PRESIDENT EGAN: Mr. Nolan has been attempting to get the floor.

NOLAN: For those that are worried about the legislature not taking care of the sports fishermen and the game license, when the legislature first decided to go into the planting of trout streams, sports fishing, etc., they appropriated a sum, I think it was \$50,000 and I think the Territory only took in about \$20,000. We have gradually increased that amount every year to more than what we were taking in and this biennium we will just about reach what the legislature has appropriated. The legislature has always been very generous on any of these items that come before it and I doubt if at any time, from my experience in it, that any of these items would be decreased and as far as Mrs. Hermann's objection, I think it would be a very very unusual exception rather than the rule, but the procedure is there in case the federal earmarking was dropped, the legislature would still have the right to appropriate, which was a very good provision, I think.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, I am not at all satisfied that a clear distinction has been made here this morning between "tax" and "license" and I am not going to do it on an ad lib basis. I have no doubt that Mr. Barr's figures probably come from the Tax Commissioner's office or some equally reliable source but I am not sure that even that segregation would satisfy a legal distinction between a "tax" and a "license". Because of that I am opposed to the amendment to the amendment and only because I feel that it is extremely remote that the federal government will ever change fundamentally the provisions which we now know as the Dingell-Johnson and Pittman-Robinson measures.

I think that unless we are absolutely clear in our minds as to the distinction between a "license" and a "tax" that we may well endanger these two programs which the sportsmen across the nation enjoy by adoption of the amendment to the amendment.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I wanted to speak on the same matter in the matter of extinction but in an opposite direction. In the past the Organic Act has said that we would, in order to pass certain types of taxes, have to call them "licenses" but there has been no close supervision of the terminology. It is my opinion that if we eliminate the word "license" that under the strong executive, with the Territorial governor and the Territorial attorney general, that they would make every effort to confine what was truly a tax to the tax category and what was a license to the license category even though they had to go

into the courts to do so, and it is also my opinion that under that particular terminology of tax without the use of the word "license" that some of the existing acts such as the business license tax which is both license and tax would come in under the terminology "tax" and not "license" and I think the figures that Mr. Barr quoted would be materially altered downward in regard to what were actually licenses. For that reason I support the amendment, that the matter of the interpretation of the word "tax" could not be evaded by the mere mention of a license as it has been in the past, because the people of the state and the administration charged with the responsibility would be sure to make the distinction clear either by interpretations of the attorney general or by court decision.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I know of no provision of the Organic Act that permitted, encouraged, or made desirable the practice of calling black, white. An imposition is either a license or a tax. The courts decide which it is. No legislature anywhere can call a tax, a license, and avoid constitutional provisions relating to taxes, and by the same token, no legislature anywhere can call a license, a tax, and avoid the constitutional provisions regulating licenses. I cannot follow this argument, apparently from history. It is true certain people do try to call black, white, but they don't get away with it very long.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I am opposed to Delegate McNealy's proposed amendment. I think the word "license" will be read here by context to mean "revenue raising license". You have got the word "license" in our terminology in Alaska, in our taxation by Congressional Act of 1899 when it first levied taxes on certain occupations doing business in Alaska, and throughout that ever since we have levied our revenue raising measures when based upon occupations, called them licenses but they are taxes and I think the only thing in this that makes any doubt about it is that the Committee didn't put "revenue raising" before the word "license" but I believe the courts would construe this "license" to mean "revenue raising license" and it should be kept in the amendment as proposed by the Committee.

UNIDENTIFIED DELEGATE: Question.

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

V. RIVERS: Roll call, please.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 10 - Emberg, H. Fischer, Johnson, King, Laws, McNealy, R. Rivers, V. Rivers, Rosswog, Smith.

Nays: 44 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Kilcher, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, Robertson, Stewart, Sweeney, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Absent: 1 - Sundborg.)

CHIEF CLERK: 10 yeas, 44 nays, and 1 absent.

PRESIDENT EGAN: The "nays" have it and the proposed amendment to the amendment has failed of adoption. We have before us the original amendment. Mr. Armstrong.

ARMSTRONG: Mr. President, I wonder if we could have a short recess before we come to the vote on this matter.

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

RECESS

PRESIDENT EGAN: The Convention will come to order. We have the committee amendment before us at this time. The question is, "Shall the proposed amendment as offered by the Committee be adopted by the Convention?" The Secretary will please read the proposed amendment.

CHIEF CLERK: "Section 7, page 2, strike lines 25 and 26 and insert in lieu thereof the following: 'Section 7. The proceeds of any state tax or license or part thereof shall not be allocated to any special purpose, '."

PRESIDENT EGAN: The question is. "Shall the proposed amendment as offered by the Committee be adopted by the Convention?"

UNIDENTIFIED DELEGATE: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 47 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cross, Doogan, H. Fischer, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Johnson, Kilcher, Knight, Lee, Londborg, McCutcheon, McLaughlin, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Taylor, VanderLeest, Walsh, White, Wien, Mr. President.

Nays: 7 - Cooper, Davis, Emberg, King, Laws, McNealy, Sweeney.

Absent: 1 - Sundborg.)

CHIEF CLERK: 47 yeas, 7 nays and 1 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Mr. Johnson.

JOHNSON: Mr. President, I have an amendment to Section 7.

PRESIDENT EGAN: Mr. Johnson has an amendment to Section 7. The Chief Clerk may please read the proposed amendment.

CHIEF CLERK: "Page 3, lines 2 and 3, strike the words 'prohibit the continuance of' and insert the words 'apply to'.

PRESIDENT EGAN: Mr. Johnson.

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

TAYLOR: I second the motion.

PRESIDENT EGAN: Mr. Johnson moves the adoption of the amendment, Mr. Taylor seconds the motion. The Chief Clerk will please read the proposed amendment.

(The Chief Clerk read the proposed amendment again.)

PRESIDENT EGAN: Would the Chief Clerk please read that sentence as it would appear if the proposed amendment is adopted.

CHIEF CLERK: "This provision shall not apply to any allocation for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I would like to speak briefly in favor of that

amendment. I have in mind that the legislature might reorganize the road program and repeal existing laws and re-enact a new program. If you retain the present language which says "shall not prohibit the continuance of" and if a legislature in reorganizing something happened to repeal the existing law and then tried to re-enact it, why then you have an argument as to whether you had to stick with that old law forever or whether they could re-enact something like that, and so I think Mr. Johnson's proposed amendment clears that up.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I am very much in favor of this amendment to that particular section, and I happen to be the author of the original tobacco tax and when I see the good that was done in regard to the school system, which is in a very rundown condition, and it is continuing to be of such use to them, I felt it should be a protection, this is a protection given to this for the roads and given to the schools. I think it should be retained.

PRESIDENT EGAN: Mr. Nolan.

NOLAN: Of course I am against the amendment because I think it just freezes it completely and I think that in the future there might be a need for a change, and therefore as I say, I am against the amendment. My recollection of this tobacco tax, I thought Steve McCutcheon was the author of that. (Laughter)

TAYLOR: I was the author of it in 1945. Mr. McCutcheon raised the tax.

PRESIDENT EGAN: Mr. White.

WHITE: May I ask Mr. Johnson a question?

PRESIDENT EGAN: You may ask your question.

WHITE: Could this change, if adopted, be interpreted to mean that the present allocations for special purposes would be retained?

JOHNSON: Yes.

WHITE: It could not be discontinued?

JOHNSON: That is correct.

WHITE: Your intent in offering this amendment then, is slightly different than Mr. Rivers' reason for supporting it?

JOHNSON: Well, it includes Mr. Rivers' reasons, but it is a little broader.

WHITE: I would like to have you explain if you would, how the words "apply to" in place of "not prohibit" accomplishes what Mr. Rivers wants.

JOHNSON: Well, perhaps, Mr. Rivers can explain that better than I can.

WHITE: I should have addressed that part of my question to him.

PRESIDENT EGAN: Mr. Rivers, would you care to answer that?

R. RIVERS: "Shall not prohibit the continuance of" means that you could stick to an existing law as long as you could manage to do so. If you wanted to repeal the existing legislation and rewrite a new program, then you are getting into the subject of re-enactment. Then somebody would say, "That's not a 'continuance of', you have already killed that one." You are not continuing any more and under the prohibition you may not re-enact it.

WHITE: I was wondering, Mr. Rivers, then if you should get the word "continuance" to accomplish your purpose, rather than inserting the words "apply to".

R. RIVERS: No. It is a continuance factor that I am talking about, but if you say "shall not prohibit continuance", when you strike out the word "continuance" then you say "shall not prohibit" as to programs already in existence, then you have arrived at the same thing by the same words. I don't concur with Mr. Johnson that this would freeze present earmarking. I think if you don't put any particular prohibition in the constitution, the whole subject is in the hands of the legislature. They wouldn't be prohibited under Mr. Johnson's amendment from repealing some of our existing earmarkings, but they would not be prohibited from later reinstating them as I understand it, Mr. Johnson.

PRESIDENT EGAN: Would the Chief Clerk please read the sentence as it would appear, once more, if this amendment is adopted.

CHIEF CLERK: "This provision shall not apply to any allocation for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

PRESIDENT EGAN: Where did we lose the words "continuance of"?

CHIEF CLERK: "Prohibit the continuance of" are the words that he wanted stricken.

JOHNSON: My amendment eliminated those words. "Prohibits the continuance of", those words are stricken.

PRESIDENT EGAN: The Chair just wanted to be certain that that

was the intent.

JOHNSON: You then insert in lieu thereof "apply to".

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: May I ask Mr. Johnson a question?

PRESIDENT EGAN: You may.

NORDALE: Mr. Johnson, would your amendment mean that, say 50 years from now, if the legislature was saddled with some earmarked fund, they could do nothing about it?

JOHNSON: Without an amendment to the constitution, yes.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. Johnson, is it your intent that a motor fuel tax could never be reduced? Is that the intent of the amendment? I don't quite follow that.

JOHNSON: No, I don't believe that is the intent of the amendment at all. It simply means that the motor fuel tax money cannot be used for any other purpose than what it is now used for, to build the road that Colonel Marston was talking about, small boat harbors, and small airfields. The amount of the tax has nothing to do with earmarking.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, as far as I am concerned it appears to me that the legislature set up these earmarkings in the first place. They are very desirable now and I am particularly interested in the tobacco tax which has done a lot of good, but I can't say that 5, 10, or 20 years or any number of years hereafter that the earmarking may be desirable. For that reason I don't like to freeze them as they now are. I think the words ought to stay something as they are now.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: Mr. President, it seems to me that the changing of this to "apply to" would be an invitation in the next few legislatures before statehood to jump in and earmark just as many funds as they could so that they would remain frozen. It seems to me that that would be a bad feature.

PRESIDENT EGAN: Mr. Stewart.

STEWART: How would royalties, for instance, on the production of oil be regarded under this provision? Would they be considered taxes or licenses?

PRESIDENT EGAN: Does the Chairman of the Committee have the answer for that question or anyone on the Committee? Mr. Nolan.

NOLAN: Mr. President, I would imagine they would just go right into the general fund.

STEWART: I was thinking if they were earmarked until the end of this, that we can see the very, very large revenues deriving from oil lands. If they were earmarking them, for instance for schools even, it might be that the revenue from those lands would amount to millions and millions a year, far beyond even our requirements for schools.

PRESIDENT EGAN: Mr. Nolan.

NOLAN: They wouldn't be earmarked because they are not under any existing law now, the earmarking of them, so this section would not apply to it. It would go into the general fund.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I want to say that in my opinion, the words "apply to" would be better than the present wording because I think if the provisions of this section did not apply to allocations already in existence when the constitution was adopted, then the legislature could raise, lower, eliminate, replace any of the ones that they might have, at the time they might see the need. I believe the words "apply to" wouldn't give a great deal more flexibility to the operation of existing ones than the raising, lowering, eliminating or replacing of them, than would the present wording. Therefore, I favor the amendment.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I challenge the legal conclusion that this would freeze existing earmarking. I have tried to make it clear --

MCCUTCHEON: Point of order, Mr. President.

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

MCCUTCHEON: I think Mr. Ralph Rivers has spoken once on this already.

PRESIDENT EGAN: Your point of order is well taken. Mr. Riley.

RILEY: I am not especially satisfied that this language does allow range within which to work as has been suggested and if it will interest anyone, I would suggest a five-minute recess.

PRESIDENT EGAN: If there is no objection, the Convention will

stand at recess for five minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us Mr. Johnson's proposed amendment to Section 7. The Convention will come to order. The question is, "Shall the proposed amendment as offered by Mr. Johnson be adopted by the Convention?" Mr. Johnson.

JOHNSON: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll. Mr. Cooper.

COOPER: Mr. President, before I can vote on this, I would like to hear a little more of the decision on this. I don't know exactly how to vote. If these words "apply to" mean that everything is frozen then I am not in favor of it. And I understood the recess was a matter of getting a little more clarification and I would like to hear that before we vote on that.

PRESIDENT EGAN: Before any name has answered to the roll call, he is in order if anyone can answer or wishes to answer. Mr. Marston.

MARSTON: I asked the maker of the amendment and he said this would guarantee the road in Spenard and that is what I want to see built. I'd like to see that road built. We have raised the money, we have paid for it, it isn't built yet and we want that money to build that road. If it will do that I am going to vote that amendment.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I am opposed to the amendment. Alaska has a potential of such magnitude that its future cannot be reasonably predicted by anyone. I should hate very much to see something go into the constitution that froze all of these appropriations that are now earmarked to the same purpose in perpetuity because I very strongly feel that some of them are not going to be necessary as earmarked funds for too long a period of time and I think the amendment should be defeated.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: Mr. President, I think I can speak for at least the majority of the Committee, perhaps the whole Committee, but we would oppose this amendment because it was the intention of the Committee that the present allocated earmarked funds be allowed until such a time as they might be removed from the books but it was not our intention that they be removed and

then put back in again at some later date, so we would oppose that and any other change of wording that would allow that.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, I hadn't intended to get into this act but I am afraid I shall have to say a little something about it. I am not opposed to earmarked funds, particularly when it involves a matter of schools and matter of roads. I served on the Board of Road Commissioners for quite some time until my sudden demise in the last legislature. However, during that period of service I found out the value of having an earmarked fund for the purpose of building roads, small airports, airfields, and small boat harbors. We have seen many instances in the past when before this earmarked fund was established, back in 1945 or 1946, I know before that many times the legislature would appropriate large sums of money for roads and then in the process of adopting other measures that required specific appropriation, they would make the raid on the road fund because that seemed to be the best way of doing it and I can never imagine when Alaska will get so big that it will not need roads. Mrs. Hermann seems to think that at some time when roads will be of no consequence, but that to me is inconceivable.

HERMANN: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order, Mrs. Hermann.

HERMANN: Mr. Johnson is not sticking to the amendment at all in this regard. He is talking about keeping a fund for roads and that isn't what it says at all, and I didn't say anything about roads.

JOHNSON: Well, it is an earmarked fund, so let me put it that way. But I do believe that in this manner there can be no question but if this amendment is adopted that the legislature will not be permitted to tamper with the funds that are now set up for specific purposes and that is my intent.

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

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

Yeas: 13 - Emberg, H. Fischer, Hinckel, Johnson, King, Laws, McNealy, Marston, Peratrovich, V. Rivers, Smith, Taylor, Mr. President.

Nays: 40 - Armstrong, Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cooper, Cross, Davis, Doogan, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hurley, Kilcher, Knight, Lee, Londborg,

McCutcheon, McLaughlin, McNees, Metcalf, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, Robertson, Rosswog, Stewart, Sweeney, VanderLeest, Walsh, White, Wien.

Absent: 2 - Hilscher, Sundborg.)

CHIEF CLERK: 13 yeas, 40 nays, and 2 absent.

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

KILCHER: I have an amendment.

PRESIDENT EGAN: You may submit your amendment, Mr. Kilcher. To Section 7?

KILCHER: Yes.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 7, page 3, line 5, change period to comma and add: 'but discontinuance shall be approved by a two-thirds majority in both houses.'" "

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I move that the amendment be adopted.

PRESIDENT EGAN: Mr. Kilcher moves that the proposed amendment be adopted. Will the Chief Clerk please read the amendment once more.

(The Chief Clerk read the amendment by Mr. Kilcher again.)

PRESIDENT EGAN: Is there a second to Mr. Kilcher's motion?

HELLENTHAL: I'll second the motion.

PRESIDENT EGAN: Mr. Hellenthal seconds the motion. Mr. Kilcher.

KILCHER: Mr. President I think the amendment will, in this controversial question, show a middle road in the matter. I am fully aware of the importance of some earmarked funds and I would hate to see them largely discontinued without very good consideration in future legislatures of the state. Being from a country that is in great need of capital improvement and having firsthand seen the benefits of earmarked funds in regards to schools and roads, I would like to see these earmarked funds continued as long as possible, and I would like to see it take more than a simple majority in the future legislature

to discontinue these earmarked funds and I think the amendment here would at least for these specific earmarked funds would show a reasonable possibility of compromise that might suit the majority.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER: Mr. President, I am opposed to the amendment. The earmarking that we have now was adopted by simple majority of the legislature and I don't think we should set up an extraordinary majority like this for any changes in existing funds.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is -- Mr. Kilcher.

KILCHER: Mr. President, may I close the debate and answer Mr. Fischer's question?

PRESIDENT EGAN: You may.

KILCHER: These earmarked funds when they were set up by a simple majority, it was not then foreseen that a prohibition might arise in the future, in the constitution for further earmarked funds. This trend is new and I think it is, in general, an exception which should be made for those existing.

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

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

Yeas: 16 - Coghill, Emberg, H. Fischer, Johnson, Kilcher, King, Laws, Londborg, McNealy, Marston, Peratrovich, Robertson, Rosswog, Smith, Taylor, Mr. President.

Nays: 37 - Armstrong, Awes, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Doogan, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Knight, Lee, McCutcheon, McLaughlin, McNees, Metcalf, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Stewart, Sweeney, VanderLeest, Walsh, White, Wien.

Absent: 2 - Hilscher, Sundborg.)

CHIEF CLERK: 16 yeas, 37 nays and 2 absent.

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

R. RIVERS: I have an amendment to offer, Mr. President.

PRESIDENT EGAN: You may offer your amendment. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 7, page 3, line 3, delete the words 'the continuance of'."

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

COGHILL: I will second the motion.

PRESIDENT EGAN: Mr. Ralph Rivers moves the adoption of the proposed amendment, seconded by Mr. Coghill. Mr. Rivers.

R. RIVERS: Mr. President, I am trying to not get at cross purposes with the Committee, but to clear up what I think is a basic point and I think to improve the situation for the future operations of the legislature. Now when this says, the language being at present. This provision shall not prohibit the continuance of any allocation for special purposes existing upon the date of the ratification of this constitution." That sounds as though you are freezing the exact rate that is now allowed, or the exact rate that is now specified, and it also raises the question of giving some flexibility on that rate. Now, if this amendment of mine passes, it would read: "This provision shall not prohibit any allocation for special purposes existing upon the date of ratification of this constitution." If it shall not prohibit such allocations, then the legislature could not go above the existing allocations but it could plausibly drop below the existing allocations. It could knock off on an allocation for 10 years and come back with the same allocation. It could repeal an existing earmarking law and rewrite it and re-enact the same allocation or a lesser rate of the same allocation. I know it is a little hard to carry through an idea which is on the technical side but I sincerely feel that this is not undermining the Committee's thinking and we will give more flexibility to the future legislature and is a distinct improvement on this freezing everything to a continuance of present allocations.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. President, I support this amendment, too, on the same grounds that Mr. Rivers has just spoken on and I believe that under this provision that we have, in our 31 school districts in Alaska at the present time, each one of them are bound by a resolution to the Alaska Public Works or the Department of the Interior on finance of school projects, buildings, and whatnot, and upon the completion of those projects they may want to do away or suspend down the now present five cents a package on tobacco tax. I believe that this gives the legislature a lot more flexibility in allowing for growth or the

decline of the problem that we are facing today and if we do get another influx into the Territory in different areas, it could again be re-enacted back to this phase.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. President, to me I read this the same as the previous amendment. I see no difference between this provision, 'shall not apply to any allocation' than the provision "shall not prohibit any allocation". To me it has the same identical meaning that we have already acted upon. Point of order. I believe that we have acted on this unless the mover could show us the difference.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, to say that the prohibition of this particular section "shall not apply to existing allocations" means that they could double those allocations or the rate involved. Mine would say that I retain this thought of prohibition. This provision, "shall not prohibit any allocation for special purposes existing at the time this constitution is ratified" but no future legislature could go above, under this present language, existing allocation rates, but if you say that the section does not apply then the legislature could double.

RILEY: Mr. President, subject to committee announcements, I move and ask unanimous consent that we recess until 1:30.

PRESIDENT EGAN: Are there committee announcements at this time? Mr. Smith.

SMITH: Mr. President, the Committee on Resources will meet at 1:00 in one of the committee rooms upstairs.

PRESIDENT EGAN: Committee on Resources at 1:00 upstairs. Are there other committee announcements? Mr. Rosswog.

ROSSWOG: The Local Government at 12:40 upstairs.

PRESIDENT EGAN: The Local Government at 12:40 upstairs. Mr. Davis.

DAVIS: Mr. President, the special committee consisting of some members from Style and Drafting, some members from Judiciary, some members from the Committee on Direct Legislation will meet in the gallery at 1:00.

PRESIDENT EGAN: The special committee to meet in the gallery at 1:00. Are there other committee announcements? If not, Mr. Riley asks unanimous consent that the Convention stand at recess until 1:30 p.m. Mr. Nerland.

NERLAND: Finance Committee will meet at 1:00 upstairs.

PRESIDENT EGAN: Finance Committee at 1:00 upstairs. If there is no objection the Convention will stand at recess until 1:30 p.m.

RECESS

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

HURLEY: I ask unanimous consent that we revert to the matter of communications.

PRESIDENT EGAN: If there is no objection, Mr. Hurley, we will revert to the matter of communications at this time. You may present your communication.

HURLEY: Mr. President, I have a communication here from Mr. Ben Hitchcock of Caribou Creek pertaining to certain items in the constitution which I ask to file with the Secretary for perusal by the committee chairmen as they see fit.

PRESIDENT EGAN: If there is no objection, Mr. Hurley, the communication will be placed in the Chief Clerk's files. The Chief Clerk may please read the communications.

(The Chief Clerk read an invitation from the YMCA Board of Directors inviting the delegates to attend the open house of the new Young Men's Christian Association on January 22, between 1 and 5 p.m. Also, a telegram from William L. Paul, Grand President of the Alaska Native Brotherhood, endorsing the proposal that fisheries, game, and fur be controlled by separate commissions, was read.)

PRESIDENT EGAN: The communications will be filed. Are there other communications or anything else to come before the Convention before we proceed with the second reading of Committee Proposal No. 9? The Chair notes that the Finance Committee is not with us yet. Would the Sergeant at Arms inform them that the Convention is in session? You may be at ease for a moment or so. The Convention will come to order. We have before us the proposed amendment as offered by Mr. Ralph Rivers, as the Chair recalls the situation when we recessed. The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 7, page 3, line 3, delete the words 'the continuance of'."

PRESIDENT EGAN: The Chair notes that Mr. Rivers is not here at this time. Mr. Victor Rivers.

V. RIVERS: He will not be back for about a half-hour.

PRESIDENT EGAN: Do you think it would be proper to proceed with the amendment? What is the wish of the body?

V. RIVERS: I wouldn't presume to speak for him. I suppose we could go on to other matters.

PRESIDENT EGAN: We could hold this amendment in abeyance until Mr. Rivers arrives. Are there other proposed amendments to Section 7? Does the Committee have an amendment for Section 8? Mr. Nerland.

NERLAND: There is a proposed amendment on the Chief Clerk's desk.

PRESIDENT EGAN: The Chief Clerk will please read the proposed committee amendment to Section 8.

CHIEF CLERK: "Section 8, page 3, line 10, before the word 'a' insert the words 'not less than'. Line 12, after the word 'question' delete the comma and insert a period. Add a new sentence which will read as follows: 'Additional requirements and qualifications may be provided by law.' Start a new sentence with the word 'Provided' and continue as in the proposal."

PRESIDENT EGAN: Mr. Nerland, what is your pleasure with relation to this amendment?

NERLAND: Mr. President, during the noon recess we had this mimeographed and it is now being distributed and I think there is a slight difference in wording. May we substitute the mimeographed version, please?

PRESIDENT EGAN: The Chief Clerk will please read the mimeographed version.

CHIEF CLERK: "Amend Section 8 as follows: 'Section 8. No debt shall be contracted by or in behalf of the state, or any political subdivision thereof, unless the debt shall be authorized by law for capital improvements specified therein and be approved by not less than a majority of the qualified voters of the state or of the respective political subdivision voting on the question. Additional requirements and qualifications may be provided by law. The state may by law contract debt for the purpose of repelling invasion, suppressing insurrection, defending the state in war, meeting natural catastrophes, or redeeming outstanding indebtedness of the state at the time this constitution becomes effective.'"

NERLAND: Mr. President, I move and ask unanimous consent that this amendment be adopted.

PRESIDENT EGAN: Mr. Nerland moves and asks unanimous consent that this amendment be adopted. Mr. Johnson.

JOHNSON: Point of order, Mr, President.

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

JOHNSON: As I recall it, before we adjourned yesterday, someone had given notice of reconsideration on a matter that pertains to Section 8. Will that notice of reconsideration interfere with this proposed amendment?

PRESIDENT EGAN: Mr. Johnson, your point of order might be well taken in that it relates to this particular section. Mr. Victor Rivers.

V. RIVERS: This amendment does not in any way affect the subject matter of the reconsideration. It is identical in wording to what the reconsideration is on, even though there has been some words added, it is not altered as I see it. I am waiting to see whether we amend this section or not as to whether I amend it -- not in accordance with this but, perhaps, in such a way that I would not care to submit the reconsideration.

JOHNSON: I had no objection, you understand.

PRESIDENT EGAN: Yes. Mr. Riley.

RILEY: May I have the floor for a moment, Mr. President, on the point of personal privilege?

PRESIDENT EGAN: Yes, if there is no objection, Mr. Riley, you may have the floor.

(Mr. Riley spoke on a point of personal privilege.)

PRESIDENT EGAN: How do you mean, it should be considered in conjunction with the one before us, Mr. Riley?

RILEY: My whole thinking there, Mr. President, is that they go to the same matter and I should like to feel that the members had read each before acting on either. If the other mimeographed proposed amendment to Section 8 is before them, I think it would be well if each member acquainted himself with the provisions of each of the pending amendments.

PRESIDENT EGAN: Objection was heard. Mr. Nerland had asked unanimous consent. Did you object, Mr. Johnson?

JOHNSON: I don't object. I simply had that point I wanted brought out.

PRESIDENT EGAN: Mr. Barr.

BARR: Mr. President, on a point of order, we're considering an amendment to this section now. I believe I have a copy of Mr. Riley's so-called amendment. It is not an amendment at all, it is not only a new section, but it wipes out the purpose of the

original section. The purpose of the original section was to not allow any indebtedness except by referendum to the people and this eliminates that, if I have the right one here in my hand, so therefore I don't think it is an amendment.

PRESIDENT EGAN: The only thing we have before us is Mr. Nerland's unanimous consent request. Is there objection to Mr. Nerland's unanimous consent request?

HURLEY: I object.

PRESIDENT EGAN: Mr. Hurley objects. Is there a second to the motion?

METCALF: I'll second it.

PRESIDENT EGAN: Mr. Nerland so moves, seconded by Mr. Metcalf that the proposed amendment by the Committee be adopted by the Convention. The amendment is open for discussion. Mr. Nerland.

NERLAND: Mr. President, it was felt that there was some opposition to the original wording wherein it was specified that a majority of the voters would be required, and, also, no qualification was actually put on the people that should vote. The Committee felt that this underlined wording would place the majority as a minimum and allow the legislature to supply additional requirements both as far as the percentage of the majority required and the additional qualifications of the voters or other regulations regarding the voting on the matter.

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

COGHILL: May I ask a question, Mr. Chairman?

PRESIDENT EGAN: You may.

COGHILL: Mr. Nerland, does the additional requirements and qualifications that may be provided by law include in that the objection that was raised yesterday to property holders voting on a bonding issue in a local subdivision?

NERLAND: I believe that it was the intention of the Committee that the legislature would have that authority under this wording.

COGHILL: That takes care of my objection.

PRESIDENT EGAN: Is there further discussion? Mr. Victor Rivers.

V. RIVERS: Mr. Chairman, I can't read this as meaning anything but what it says. It says, "The majority of the qualified

electors in any political subdivision..." Now maybe I can't read. Maybe there is written into this something that says the legislature may prescribe requirements, but it says "additional requirements". This is a minimum requirement. If you vote for this amendment, you did what Mr. Davis said yesterday, it merely strengthens the effect of the first section as he said he desired to do rather than meeting the objections of those of us who felt that the legislature should have power in setting up requirements for referendums in the local political subdivisions. So, as I see this, if you adopt this in the constitution, you forever foreclose any vote by only property holders on a general obligation bond issue. Now the present method of voting on revenue bond issues is that all the people vote, but on the matter of general obligation bonds, it has been limited to property owners. So, if you adopt this you are forever eliminating the property owner, only, as having a vote in regard to general obligation bonds. I, for one, strongly object and prefer to see the matter of what type of referendum may be allowed. I am perfectly willing to accept that there be a referendum in the political subdivisions but allow the legislature to establish the rules by which those referendums may be conducted rather than write it in to the constitution that a majority of the qualified voters shall have to act on every bond issue. Now you are taking the power of voting on obligations against the property tax rolls out of the hands of the property owners. You are putting it into the general electorate of the community and I believe that in some cases it should be there, but I believe in other cases it should be in the hands of the people who are the property owners. So, I don't see how under this amendment there has met any of the objections under which I asked reconsideration, and in which others objected to, I don't see where any of those objections have been met. If anything, the substance matter here has been to strengthen the thing which we desire to not be done, that the legislature could not establish regulations for elections on bond issues in local political subdivisions.

COGHILL: Mr. President, may I ask Mr. Rivers a question?

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

COGHILL: Sir, has it been your interpretation that the line that says that "not less than a majority of the qualified voters of the state or of the respective political subdivisions voting on the question" means in here that the legislature in making additional requirements can't provide that a majority of the qualified voters are property owners of that subdivision?

PRESIDENT EGAN: Mr. Rivers.

V. RIVERS: It is my opinion that the qualified voters have nothing to do about whether or not they are property holders.

It just says "qualified voters" and as I understand the interpretation, that is a person that has been one year in the Territory and 30 days in their precinct.

COGHILL: So the "respective political subdivision" does not qualify him as a resident or property holder of that?

V. RIVERS: That is exactly right and I am sure that the courts will hold it that way.

COGHILL: Well, then I am opposed to it.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, I had something to do with helping to write this amendment and if it says what Mr. Rivers says that it means, certainly I didn't do a good job, because what I intended in writing a somewhat similar amendment which I gave the Committee, was that the legislature could establish qualifications of voters in these elections -- something more than just being a qualified voter and that something more could very well be only property owners and certainly that is what I hoped it would be. I am still consistent with the position I took yesterday. I don't believe that bond issues should be passed, at least in local districts, with anybody except property owners voting on them and it would be my idea that the legislature probably would make that provision. The language is drawn to the best of my ability to allow them to do that if they thought it was wise.

PRESIDENT EGAN: Mr. Hinckel has been trying to get the floor. Mr. Hinckel.

HINCKEL: I would like to ask a question of the Committee. I submitted to them a suggestion and if they had adopted my suggestion this would now read, "be approved by not less than a majority of the voters of the state or respective political subdivision qualified to vote on the question". I thought that would cover it and I just wondered if they had some good reason for feeling that that was not an acceptable suggestion.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President. Mr. Hinckel, in considering the two amendments, Mr. Hinckel, we thought that Mr. Davis's and yours both did the same thing except that when we got Mr. Davis's, it had the words "not less than" in it and yours at the time we got it, did not. I am sure the Committee is trying to arrive at the same goal that both you and Mr. Davis are trying to arrive at because that was what we had intended originally. The only reason we adopted Mr. Davis's amendment was because we thought it accomplished that purpose.

PRESIDENT EGAN: Mr. Gray.

GRAY: Mr. Davis, we use these words "qualified voters in a general election". I wonder if the term "qualifying voters" wouldn't clear up the general election "qualified voters".

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. Gray, I think it might be, I believe that Mr. Hinckel has a better answer to that particular problem than using the word "qualifying". The only thing is that, as I see it, Mr. Hinckel's language goes one step further than mine. It would require the legislature, by implication at least, to set up some procedure which would require, or which would set what the "qualified voter" was. Now the language I have used does not. I would hope that the legislature would do so but I have left it strictly up to the legislature as to what they wanted to do in that line.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: Mr. President, there were some of the others of us that worked on an amendment and I rather thought that it would be taken care of when Mr. Davis met with the Committee and our suggestion was to strike "qualified voters" and insert "voters qualified to vote on the particular issue as the law may provide". Then if it is a state level they could specify that the qualified voters would be the electors. If it is a local issue the qualified voters or those qualified to vote on that issue may be the property holders. The law could put a blanket rule one way or the other and I think you would have the whole thing taken care of on that.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I think the Committee has done an excellent job on this question and if Mr. Hinckel's or Mr. Londborg's suggestion is followed to its logical conclusion a very necessary bond issue could be defeated by merely staying at home. To make it concrete, this is the important language: "a majority of the qualified voters voting on the question". Now if you adopt Mr. Hinckel's suggestion, as I understand it, if there were, say, 9,000 qualified voters in Juneau, it would take 4,500 affirmative votes to pass any bond election.

HINCKEL: Point of order, Mr. President.

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

HINCKEL: He referred to the amendment that I mentioned here and the words on lines 11 and 12 "voting on the question" were not deleted so it would still be the ones voting.

PRESIDENT EGAN: You have a different amendment to it, Mr.

Hellenthal? Don't you have Mr. Riley's proposed amendment?

HELLENTHAL: No, I think I am speaking on Mr. Hinckel's suggestion. Now that is unduly harsh.

KILCHER: Point of order, Mr. President.

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

KILCHER: Are we debating a suggestion or are we debating an amendment?

PRESIDENT EGAN: We are debating the particular amendment, Mr. Kilcher.

HELLENTHAL: I merely illustrate this to show why the choice of the words "a majority of the qualified voters voting on the question" -- in other words, I think the Committee's choice is most wise.

NERLAND: May we have a two-minute recess to see if we can resolve this?

PRESIDENT EGAN: Is it the desire of the body to have a recess? If there is no objection the Convention will stand at recess for two minutes.

RECESS

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

NERLAND: Mr. President, after considering various phases and various suggestions that have been offered here, the Committee definitely feels that this present amendment does cover all objections that have been raised and since the wording will allow the legislature to place additional requirements on the percentage of the majority that is to be required and additional qualifications of the voters, such as being on the property tax roll, etc., the Committee is in favor of allowing the present amendment to stand.

UNIDENTIFIED DELEGATE. Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by the Committee be adopted by the Convention?" All those in favor of adopting the proposed amendment will signify by saying "aye", all those opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 30 - Awes, Barr, Boswell, Collins, Cross, Davis, Gray,
Hellenthal, Hinckel, Johnson, Kilcher,

Knight, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Peratrovich, Poulsen, Reader, Smith, Stewart, Taylor, Walsh, White, Wien, Robertson.

Nays: 19 - Buckalew, Coghill, Cooper, Doogan, Emberg, H. Fischer, V. Fischer, Hermann, Hurley, King, Laws, Lee, Londborg, Nordale, Riley, V. Rivers, Rosswog, Sweeney, Mr. President.

Absent: 6 - Armstrong, Harris, Hilscher, R. Rivers, Sundborg, VanderLeest.)

CHIEF CLERK: 30 yeas, 19 nays and 6 absent.

PRESIDENT EGAN: And so the "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 8? Mr. Kilcher.

KILCHER: I am sorry I have to ask a question of Mr. Nerland. There is something very unclear in my mind about this.

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

KILCHER: At the end of the first sentence -- "voting on the question" -- now is that the subdivision voting on the question or is that the qualified voters voting on the question?

NERLAND: It is the intention of the Committee that that be the voters voting on the question whether it be the state or the political subdivision on the particular question that might be involved.

KILCHER: So "voting on the question" does not pertain to the last part of the sentence that starts "or of the respective political subdivision"? It pertains to "state", too?

NERLAND: That is correct.

KILCHER: Thank you.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I have an amendment to the committee amendment that was just adopted. It is to Section 8.

PRESIDENT EGAN: You may submit your amendment, Mr. Cooper. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 8, lines 4 and 5, delete 'not less than'; line 6, delete 'qualified voters of the State or of the respective political subdivision voting' and insert in lieu thereof

on line 5, the following: 'votes cast by voters qualified to vote'."

PRESIDENT EGAN: Will the Chief Clerk please read the section now as it would read if the proposed amendment is adopted.

CHIEF CLERK: "Section 8. No debt shall be contracted by or in behalf of the State, or any political subdivision thereof, unless the debt shall be authorized by law for capital improvements specified therein and be approved by a majority of the votes cast by voters qualified to vote on the question."

PRESIDENT EGAN: Mr. Cooper, what is your pleasure with relation to this?

COOPER: I move the adoption of this amendment, Mr. President.

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

HINCKEL: I'll second it.

PRESIDENT EGAN: Mr. Hinckel seconds the motion. The motion is open for discussion. Mr. Cooper.

COOPER: Mr. President, this would, I believe, satisfy the argument of Mr. Hellenthal in that it would be the majority of the votes cast by the qualified voters, or the voters qualified to vote on the question, and in addition, would not delete the additional requirements and qualifications that may be provided by law.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I am fully satisfied by the amendment that was just adopted. It says a "majority of the qualified voters voting on the question". That, to my mind, is identical to saying "majority of the votes cast at the election".

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: May I ask Mr. Hellenthal a question?

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

V. RIVERS: Don't you think the words "qualified voters" have a legal implication beyond what you are trying to read into them or think the legislature could read into them?

HELLENTHAL: None whatsoever, Mr. Rivers.

V. RIVERS: "Qualified voters" has a meaning and intent and

interpretation that makes this wide open for every voter that will fulfill our legal requirements?

HELLENTHAL: No. Mr. Rivers, I am quite impressed with your argument as to local elections, that the property requirements should be required, and I wonder if you might consider offering an amendment along that line?

V. RIVERS: I don't mind if we could clarify the situation. I want it to be clearly understood that our intent as I understand this body was as we just voted, I want it understood that it was the intent that the legislature could establish qualifications and modify the meaning of "qualified voters".

HELLENTHAL: "Qualified voters" is very clearly defined in the constitution and I think this committee proposal we have just adopted is excellent and unambiguous.

V. RIVERS: May I have the privilege of the floor for a moment?

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

(Mr. Victor Rivers spoke under the personal privilege of the floor.)

HERMANN: I had a little bit of trouble with that phraseology, too, because it seems to me that there might be a great many more qualified voters in a district or in an election precinct than actually voted and how are you going to discover what a majority of them is? I think there should be something in there that a majority of them who voted on the issue rather than just the flat term "qualified voters".

HELLENTHAL: May we have a recess for a minute?

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We have before us the amendment proposed by Mr. Cooper. Is there further discussion on the proposed amendment? Mr. Hurley.

HURLEY: Mr. President, I know there is a lot of room for different interpretations and although the amendment as offered may be a little confusing in itself, to me it is less confusing than the term "qualified voters". I am sorry that I can't share with Mr. Helleenthal the certainty that "qualified voters" means what the Committee says that it does mean, so I think that discretion is the better part of valor and I shall vote in favor of this amendment.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Cooper 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 Chief Clerk will call the roll.

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

Yeas: 30 - Barr, Boswell, Buckalew, Coghill, Cooper, Cross, Doogan, Emberg, H. Fischer, V. Fischer, Hermann, Hinckel, Hurley, Johnson, Kilcher, King, Lee, McNealy, Metcalf, Nerland, Nolan, Reader, V. Rivers, Rosswog, Stewart, Sweeney, Walsh, White, Wien, Mr. President.

Nays: 19 - Awes, Collins, Davis, Gray, Hellenthal, Knight, Laws, Londborg, McCutcheon, McLaughlin, McNees, Marston, Nordale, Peratrovich, Poulsen, Riley, Robertson, Smith, Taylor.

Absent: 6 - Armstrong, Harris, Hilscher, R. Rivers, Sundborg, VanderLeest.)

CHIEF CLERK: 30 yeas, 19 nays and 6 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. Are there other amendments to Section 8? Mr. Robertson.

ROBERTSON: Mr. President, could we have the amendment read slowly?

PRESIDENT EGAN: The section as it reads now. Mr. Robertson?

ROBERTSON: Yes, please.

PRESIDENT EGAN: Would you please read the section as it reads now with the adoption of that amendment.

CHIEF CLERK: "Section 8. No debt shall be contracted by or in behalf of the State, or any political subdivision thereof, unless the debt shall be authorized by law for capital improvements specified therein and be approved by a majority of the votes cast by voters qualified to vote on the question." The rest is the same.

PRESIDENT EGAN: Are there other amendments to Section 8? Did we have a proposed amendment by Mr. Riley? What was to be your disposition of that, Mr. Riley?

RILEY: It is my memory, Mr. President, that this was the first time around on this particular section. It was postponed last

evening and I would like to defer immediate consideration of the amendment on the Clerk's desk.

PRESIDENT EGAN: Are there amendments to Section 9? We have been through all of these sections once, so we should start with Section 1, probably for the second time around. Are there amendments to Section 1? Section 2? Section 3? Section 4? Section 5? Section 6? Section 7? Mr. Emberg.

EMBERG: I have an amendment to offer for Section 7 but I don't know whether it is proper to put it in at this time, since Mr. Rivers hasn't come back and has a prior amendment to it.

PRESIDENT EGAN: Mr. [Ralph] Rivers' amendment, was it on Section 7 or Section 8?

CHIEF CLERK: Section 7.

PRESIDENT EGAN: You might read your amendment.

EMBERG: It was simply to strike Section 7.

PRESIDENT EGAN: This amendment proposes to strike Section 7, Mr. Rivers.

V. RIVERS: I think probably the amendment is in order. You might desire to act on the other one first. When Ralph [Rivers] left, he told me he would be back at 2:00 o'clock, so he has now run past that time so I could not ask the indulgence of the body any longer.

WHITE: Mr. President, I don't know if I could add anything to that or not but I rode into town with Mr. Ralph Rivers at the lunch hour. He told me that he had mentioned to one or more other delegates that if they thought his amendment was worth pursuing, to go ahead and do so; otherwise, to let it go.

PRESIDENT EGAN: The Chair was thinking of the reconsideration notice that had been served by Mr. Victor Rivers.

V. RIVERS: Mr. President, I was waiting to see whether we adopted some clarifying words in there and inasmuch as we did, I am not going to ask for reconsideration on that question.

PRESIDENT EGAN: With relation to Section 7, Mr. Emberg, we have the amendment hanging fire here that Mr. Ralph Rivers had offered and in some way we would have to act on that amendment before we could accept yours. Is Mr. Ralph Rivers in the building at this time?

UNIDENTIFIED DELEGATE: He is coming now.

PRESIDENT EGAN: Mr. Ralph Rivers, we are now bringing before

the body once more your proposed amendment as it was before we recessed.

R. RIVERS: I presented an argument in favor of it before I left. I think it would improve matters to change that wording but I don't seem to be getting any great enthusiastic support so I will submit it; if anybody wants to support me they are welcome to do so.

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

CHIEF CLERK: "Section 7, page 3, line 3, delete the words 'the continuance of'."

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

BARR: This amendment, I don't see that it adds anything to this at all. We are speaking in this paragraph of an allocation, not of any law or of any rate of taxation, just saying that money received from a certain source should be allocated. It says, "This provision shall not prohibit the continuance of this allocation." That is what we mean. It has nothing to do with any law, or wiping out our present law, or enacting a new one. If it did that, if they put in a new law, it would still have to be allocated. I don't see why we should discontinue those words at all.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, I am awfully sorry that I am so dense here but I don't read it that way. I happen to read the following line, too, and it says that it existed "the date of ratification of this constitution". Now, I can see and I certainly hope that I'm not way off base in taking up time here, but I have to speak for myself, that it is quite possible that the Territorial legislature may, after the ratification of this constitution, eliminate one of these allocated funds and thereafter prior to the going into effect of this constitution, restore that allocated fund, either in the same amount or less, and it occurs to me that if they do that, why perhaps we should keep it. If it doesn't say that why then obviously I am wrong but I think that this refers to that, if at the next primary election this constitution is ratified the allocated funds that existed as of that date will not be affected. That is very true but if the legislature thereafter should cut those out and then at that time there would be no longer a possibility of having allocated funds whereas if they should put the same one back again it still would not follow through. I don't know if that is going going to happen or not but I can see the possibility. Now I hope I haven't taken up the wrong time here.

PRESIDENT EGAN: If the Chair might ask a question, is there any

manner in which this constitution can bind the legislature until the enabling act is passed by Congress and we become a state? Mr. White.

WHITE: Mr. President, I can't answer that definitely, I can only tell you the advice the Committee got. That is, the constitution can be retroactive in this respect, as set forth in this section.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, Mr. Hurley might like an illustration of what I'm getting at. The business license tax right now allocates 40 per cent of the amount of money which stems from businesses within incorporated cities to the cities. No, they allocate 60 per cent to the cities and they retain 40 per cent for the Territory of Alaska. If you keep these words "continuance of" in there, if the legislature decides to drop that 60 per cent allocation to the cities down to 50 per cent and then later tried to go back up to 60 per cent, you would have a partial abandonment of that particular 10 per cent and then you have a barrier in the constitution that prevents them from going up to 60 per cent again. In other words, you are putting in a barricade and taking away a little flexibility from the legislature. That does not exactly bear on your question though, does it, Mr. Hurley?

HURLEY: My mind is perfectly clear, you don't have to worry about that.

PRESIDENT EGAN: The Convention will come to order.

R. RIVERS: It is pretty hard to get through a fine distinction.

UNIDENTIFIED DELEGATE: Use the gas tax.

R. RIVERS: Well, the gas tax is a percentage allocation five per cent. We may continue five per cent but the legislature might some day want to go up to six per cent, but they couldn't because that would be additional freezing of what would be allowed here. If they want to drop down to three and then go back to five, once they drop it down to three per cent, they have a partial abandonment and then they couldn't go back again up to five. That is this continuance business. All you can do is continue. Anything you let go of you can never come back up on again. I've said if they want to do something and then re-enact up to the ceiling which they've got now, give them the power to drop below and re-enact again but I can't seem to get any aid on that.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I believe I've joined the ranks of those that are not so bright today. I get a different meaning out of this thing than Mr. Rivers, that he makes his amendment on. I kind of feel the same as Mr. Hurley does. I was trying to analyze this and I've got this that the subject matter of this amendment is the allocation for a special purpose and the article says, "This provision shall not prohibit allocation for special purposes existing upon the date of the ratification of this constitution." I think it means that any law on the books, that is earmarked funds for special purposes, that is law at the time that this constitution is ratified, may be continued. I cannot read any raise or decrease in the revenue from those revenue measures which bring in those funds as to whether an increase or decrease would invalidate it. I believe that what I get of Mr. Rivers' amendment, at this time it allows the allocation of those funds from a particular purpose for a special purpose to remain in effect. That is what I see of it, and I don't get the rest of it.

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS: If they lowered it down to three could they then reenact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Ralph Rivers be adopted by the Convention?" All those in favor of adopting 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 7? Would the Chief Clerk please read the proposed amendment as offered by Mr. Emberg.

CHIEF CLERK: "Strike Section 7."

EMBERG: I move the adoption of the amendment.

KNIGHT: I'll second it.

PRESIDENT EGAN: Mr. Emberg moves the adoption of the amendment. Mr. Knight seconds the motion. Mr. Emberg.

EMBERG: I think Section 7 is a compromise dedicated on the principle that there will be no earmarking of funds; then it goes ahead and provides for them, and this also raises in my mind the question, the real issue here is whether or not we wish to provide in this constitution a constitutional rule against the earmarking of funds. I say from my own point that a lot has been brought in on this subject for both sides from the previous debate on this subject so I won't go into that too much but I say I prefer to leave it to the legislature and if they feel that is the best, the most efficient way to use the funds of the Territory, that the continuity of programs in scientific research, capital improvements, roads, schools, in the opinion of the legislature that they should earmark funds, then I am for it.

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

ROSSWOG: Mr. President, I think I'm against earmarking of a lot of funds but I do think this should be left to the legislature. I think when you put provisions in the constitution like this it means that they will just try to find ways around them.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. President, I don't see anything in Section 7 that has anything to do with earmarking funds. Maybe I have the wrong section.

R. RIVERS: It's a new number.

HERMANN: What's it about? What is the subject?

PRESIDENT EGAN: "All revenues shall be deposited in the state treasury without allocation for special purposes..."

HERMANN: I have that marked 8.

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

NORDALE: Mr. President, I think it would be a great mistake to eliminate this section from the bill because it is a very difficult thing to un-earmark earmarked funds once they're set that way because your lobby groups are very powerful and I think you ought to think twice before you throw it out.

PRESIDENT EGAN: Mr. Cooper.

COOPER: All I have to say is that I am not particularly in favor of earmarking all the funds but I would like to transpose the word "never" for the word "shall not" and I don't think that restrictive a clause should be put in our constitution. Eventually, at some time during the life of this constitution, there will be the need or the requirement of earmarking some fund which will be derived either by a special tax or a state tax or a license. Therefore, I support the amendment.

DAVIS: I wonder if he would tell us what line he is working on there?

COOPER: Section 7, the last line as amended by the Committee. It now reads: "The proceeds of any state tax or license or part thereof shall not be allocated to any special purposes." In thinking of this, merely thinking of it as being "shall never be allocated to any special fund". I say "never be" extends too far from the scope of this Convention sitting here.

DAVIS: May I ask what Mr. Cooper wants to put in place of that?

COOPER: I don't want to put anything in there. I merely use that as support for Mr. Emberg's argument that there is or can possibly at a future date, be a need or a cause for earmarking some fund for some state tax or license.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Just to clarify it for the delegates, in striking this Section 7, as proposed by Mr. Emberg, it would therefore leave no restrictions whatsoever on the legislature nor would it provide that any existing funds that we have now earmarked and that we have to safeguard would have any constitutional backing. It would just leave it strictly to the legislature as it is right now.

PRESIDENT EGAN: Mr. Barr.

BARR: In Colorado, approximately 90 per cent of the tax collections are earmarked. In Texas, 85 per cent, Kansas has over 140 dedicated funds which embrace over 80 per cent of the state's revenue. Now the thought was suggested here that we should leave it up to the legislature. Over a period of years we have several different legislatures made up of different people and the feelings of these people towards earmarked revenues vary from year to year. We might have a legislature that sometime would earmark approximately 90 per cent of our tax revenue, and once it's earmarked it is frozen. We have heard here how the sportsmen want all the licenses earmarked and they

are not unique in that respect by any means. The commercial fishermen's license is earmarked, goes to the sick and disabled fishermen's fund and if you want a fight on your hands just try to get that un-earmarked. In the last session of the legislature it was proposed that all the fuel tax should go into the general fund and we were flooded with wires of protest from all over the Territory, especially by organizations, truckers, etc., who use gas. Our other largest earmarked fund is a tobacco tax to be used for schools and I believe it should and that is one thing that the people of this Territory want is that tobacco tax for the schools because they realize the great need for schools and all you have to do is earmark another fund and it will never be un-earmarked. If we leave this up to the legislature, to succeeding legislatures over a period of years, we will end up like poor old Texas and Colorado. We won't have anything in the general fund for appropriations.

PRESIDENT EGAN: Mr. Poulsen.

POULSEN: If we should happen to strike Section 7 it will be a very, very great mistake. Like Mr. Emberg said over here a little while ago, this was a compromise in your Committee. That is true, there was a couple of us who were for striking all earmarked funds but we compromised on account of the various ones who were interested in schools and roads, etc. I, personally, am in a peculiar position. I happen to believe in the fish and wildlife very much and would like to see somehow that it was earmarked but being against earmarking on other things that are coming up I would have to vote against it. There is also another thing to come into this if you strike it there will be more and more earmarking. It can become a political issue. People will go out and tell certain parties they'll do this for you if you vote for me, I'll see to it that this is earmarked for a swimming pool, or some such thing. That is about the best way I can explain it but I certainly hope that everybody here will consider this very, very carefully, because this is an important item.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: One more observation. The people in this assembly shouldn't overlook this fact, that the earmarking of funds is the fashion in which higher taxes are foisted upon segments of industry or the public. The people in these various classifications of industry or public feeling that this money is coming to them, are willing to submit to higher taxes, and it is not a matter of good fiscal arrangements to be taxing segments or classifications of our society or industry for special purposes at higher rates than should be charged or properly assessed against that classification or that group of industry. Consequently, I am opposed to the striking of this section.

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: I also am opposed to scratching Section 7. I think the real evil inherent in earmarking is that it so often leaves the general fund short of funds on which to operate. I can recall one occasion in our Territorial history, during the war when the road fund had been built up to quite a considerable amount and it was impossible to build roads. There was no material available and no help available and that sum pyramided up to a very considerable amount while at the same time the Territory was borrowing money in order to meet its monthly current obligations. Now, I know we can't legally borrow money but the fact of the matter is that we did, and I am not opposed to funds for roads as was suggested here this morning and I think the funds that are already earmarked are probably properly earmarked but I would hate to see the door left open to earmarked additional funds with the probable effect of reducing the general fund to the point where the services to the citizens of the Territory and the expense of operating the Territory had to be seriously curtailed. I oppose striking Section 7.

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

UNIDENTIFIED DELEGATE: Roll call, please.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 8 - Cooper, Emberg, H. Fischer, Kilcher, King, Rosswog, Sweeney, Taylor.

Nays: 41 - Awes, Barr, Boswell, Buckalew, Coghill, Collins, Cross, Davis, V. Fischer, Gray, Hellenthal, Hermann, Hinckel, Hurley, Johnson, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Smith, Stewart, Walsh, White, Wien, Mr. President.

Absent: 6 - Armstrong, Doogan, Harris, Hilscher, Sundborg, VanderLeest.)

CHIEF CLERK: 8 yeas, 41 nays and 6 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 7? The Chief Clerk will please read the proposed amendment as offered by Mr. Kilcher.

CHIEF CLERK: "Section 7. Add to Section 7, after changing period to a comma, 'but discontinuance shall not preclude reinstatement'."

2410

PRESIDENT EGAN: Mr. Kilcher, what is your pleasure on that?

MCLAUGHLIN: Point of order, Mr. President.

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

MCLAUGHLIN: Mr. President, I think we have already decided that issue before.

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment again.

(The Chief Clerk read Mr. Kilcher's amendment again.)

KILCHER: I move that the amendment be adopted.

PRESIDENT EGAN: Mr. Kilcher moves that the amendment be adopted. Now on Mr. McLaughlin's point of order, is it a point of order? If there is no objection the Rules Committee may decide the question. The Chair does not know what Mr. McLaughlin means.

RECESS

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

MCLAUGHLIN: I'll remove my point of order.

PRESIDENT EGAN: Mr. McLaughlin removes his point of order. Is there a second to Mr. Kilcher's motion?

V. RIVERS: I'll second it.

PRESIDENT EGAN: Mr. Victor Rivers seconds the motion. Mr. Kilcher.

KILCHER: Mr. President, I think the problem is simple. In making a compromise between allowing any or no earmarked funds at all, this would make compromise strongly in favor of earmarked funds, that those funds that are earmarked that we used to receive earmarked and that are earmarked now and that will be earmarked in the early stages of the state, if they, for some reason or another should be discontinued temporarily, discontinuation should be considered temporary; that, in other words, it would permit this category of earmarked funds to be earmarked at will by the legislature; that temporary discontinuation should not remove that category from earmarked funds forever; that the practice could be taken up again after a year or two, that may be after learning, for instance, that discontinuation has brought harm in one quarter or another. The next legislature might have learned by the experience and be permitted to reinstitute the practice that has been going on for 10 or 20 years. That is the intent of the amendment, and I think it

should be given due consideration.

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

WHITE: Mr. President, I would like to take the occasion of this amendment to make a statement on Section 7 and in so doing, I will close the amendment. I cannot leave this section in good conscience without agreeing with Mr. Emberg when he says that this is a compromise. Actually, I don't see how you can be against earmarking in principle and allow for the continuation of existing earmarked funds. Now I am a minority of the committee in this respect. I do not intend to submit a minority report and I do not intend to submit an amendment to strike this sentence. However, if anyone should, I would certainly support it. I am afraid it is a matter of political expediency that we are keeping this sentence in here. I certainly would not say that because the sentence is in we should strike the whole section because I think this is probably as far as we can go. I think it very probable that if such an amendment were offered -- an amendment to strike the last sentence -- we would here and now have a very good illustration of how difficult it is to get rid of earmarked funds. Mr. Kilcher's amendment is far from making it easier to retain these earmarked funds, and I would like to put myself on record as thinking that we should eliminate the ones we have now.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I support Mr. Kilcher's amendment as stated and for the reasons he stated.

PRESIDENT EGAN: Mr. Barr.

BARR: I would like to add a little to what Mr. White said. He was only in the minority in wanting to abolish all earmarked funds. The Committee was unanimous in being against the principle of earmarking funds. Some of us, including myself, fought to retain the earmarked funds we now have but we were unanimous in agreeing that the principle was bad. Now, the question here on this amendment is, whether or not you want to retain a certain percentage of our tax revenue as earmarked funds. This amendment would do that from now on. Under the present wording, it would retain it until such time as the legislature wished to repeal some of our present earmarking laws. If you are against the entire principle of earmarking, of course, you would want to retain this language.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, if earmarking is good now, which the Committee grants us, I think that it should be good in the

future. I am not for a lot of earmarking but I don't think we in the Territory of Alaska earmark too many funds. We still haven't got that road built in Spenard and we paid for it several times and I am not sure we're going to get it next year and I am going to go along with Mr. Kilcher's amendment, so that we can have earmarked funds in the future if it is a good thing.

PRESIDENT EGAN: Is there anyone else who wishes to be heard? Mr. Kilcher are you closing?

KILCHER: The words "political compromise" has been brought up and I certainly would be one that would oppose any such compromise. I have done so in the past, but I think we should compromise in the principle. We could compromise in the principle so far as our spheres have shown that there have been advantages so far in earmarking certain funds. About others I don't know the problem, but we should preserve that part of the principle that believes in earmarked funds. We should preserve that in the future and at least give it a good try. If, after abolition of some earmarked funds, the legislature should find out it was a good thing to abolish it, I trust the legislature if they want to reinstitute it, but if the legislature should find out it was a bad thing to abolish it, it should have the power and be given the chance to reinstitute it.

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

KILCHER: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 20 - Coghill, Cooper, Cross, Emberg, H. Fischer, Hinckel, Johnson, Kilcher, King, Londborg, Marston, Metcalf, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sweeney, Taylor, Mr. President.

Nays: 29 - Awes, Barr, Boswell, Buckalew, Collins, Davis, V. Fischer, Gray, Hellenthal, Hermann, Hurley, Knight, Laws, Lee, McCutcheon, McLaughlin, McNealy, McNees, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, Robertson, Walsh, White, Wien.

Absent: 6 - Armstrong, Doogan, Harris, Hilscher, Sundborg, VanderLeest.)

CHIEF CLERK: 20 yeas, 29 nays and 6 absent.

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

2413

BUCKALEW: I have an amendment.

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

CHIEF CLERK: "Section 7, page 3, line 2, delete the last sentence."

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

BUCKALEW: I move its adoption, Mr. President.

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

WHITE: I second the motion.

PRESIDENT EGAN: Seconded by Mr. White. The question is open for discussion. Mr. Buckalew.

BUCKALEW: Mr. President, I had drawn this proposed amendment yesterday. I am not going to argue it extensively. I just want to point out to the delegates that the Committee has admitted that it is bad practice to earmark funds; they have admitted that the sensible sound way to run a state is to abolish this practice which leads to evils as far as the fiscal management of the state is concerned. I ask you to let the new State of Alaska and the Territory start off with a clean slate and no earmarked funds at all. I ask you further to forget about the political implications in voting to do away with existing earmarking of funds. It is a good practice but I think we have a duty to the new State of Alaska to vote on what we think is fundamentally sound and I ask all of you to support the amendment.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I would like to ask Mr. Buckalew a question, if I may.

PRESIDENT EGAN: You may ask your question, Mr. Coghill.

COGHILL: Under your proposed amendment, Mr. Buckalew, you have struck the provision that allows the continuance of these particular earmarked funds. What would you propose that the new state would do with the 31 school districts in Alaska that have mortgaged themselves to the Alaska Public Works on the intent of the revenue brought in by the Alaska tobacco tax distribution?

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Very simple. They would just appropriate the money that comes into the 31 school districts.

COGHILL: Wouldn't that be a special appropriation and discrimination, a special appropriation to different schools?

BUCKALEW: I wouldn't think so. They would have to take care of the old obligations and the only way they can do it is to appropriate the money and pay off the obligations.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: I would like to express my view on this thing. I think we could see a fine example of what happens when we don't give a thorough consideration of our actions. Now as far as I am concerned, I participated in the deliberations of the Committee. As you all know, from your own experience within your own committee, you have to compromise and one of my compromises was this provision that we had here. I, too, felt that after I heard the arguments in the Committee, that perhaps it was dangerous to give free rein to the new state in earmarking funds. However, I realize, as I stated here today, that there was some good being accomplished by those earmarked funds that we have on the books today and I feel that I cannot support this on that condition. I don't see how the rest of my committeemen can go along with this amendment for the simple reason our proposal here is the outcome of a compromise. We went both sides of the question and we felt that perhaps it is a good thing to retain the provisions that we now have on the books but not permit any further earmarking of funds. I am, therefore, against this amendment.

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, like Mr. Peratrovich, I can see nothing wrong in a committee compromise nor can I see anything wrong in a compromise by the Convention. I believe it was Benjamin Franklin who said that a constitution is a bundle of compromises, and that is the way it should be.

PRESIDENT EGAN: Mr. Hinckel.

HINCKEL: Mr. President, I would have to speak against this amendment, particularly in regard to the gasoline tax. Any time that a tax of that percentage of the cost of an article is put against anything, why the people who are using the article and are, therefore, paying the tax, should be allowed to benefit from the tax and it is only through the earmarking of the gasoline tax for roads and boat harbors and airfields, etc., that the people do get their money back. I just couldn't support this amendment at all.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: I believe it was the opinion of the majority of the Committee that these present earmarked funds were of such

importance in their specific nature and considered so important by so many people in the Territory that in spite of a feeling by the Committee that earmarked funds in general should be frowned upon, it was felt that those now on the statute books should be left in effect as long as the legislature saw fit to leave them there. We anticipated that perhaps sometime in the future that there may not be the need that there is now and the legislature could remove them. I want to register my disapproval of this proposal.

PRESIDENT EGAN: Mr. McNealy.

MCNEALY: Mr. President, I see in this amendment one purpose which I don't approve of and that is if the amendment passed, it is simply a veto to Colonel Marston's road. Therefore, I am against it. (Laughter)

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, I already addressed myself on this section on the previous amendment so I will be brief. I think most of the delegates that have been speaking have tried to maintain that the present earmarked funds are good because their end product is good. I think there is no quarrel with that statement. The end product of any earmarked fund is good but if the end product is good and desirable it is perfectly reasonable to assume that future legislatures will see it the same way and will appropriate sufficient funds to carry out the programs that are now being carried out through earmarked taxes. I can only say that I agree with Mr. Buckalew that if this Convention decides -- as it apparently has decided -- that earmarked funds are bad, then all earmarked funds are bad and we should have the courage of our convictions and wipe them out here and now. I think it is a matter of expediency -- I shouldn't have said "political" previously -- but a matter of expediency, that of leaving them in and I have enough confidence in the voters of the future State of Alaska to feel that they would not defeat any constitution merely because some pet project, some pet earmarked funds are wiped out herein.

PRESIDENT EGAN: Mr. Coghill, you asked a question?

COGHILL: Mr. President, the first time I arose I asked a question and this time I rise to speak against the proposed amendment from the standpoint of not only the road tax but our Alaska tobacco tax which I think has been accepted by all of the people of Alaska as a fair and equal tax to its end product. I believe that the answer that was given by Mr. Buckalew to my question for appropriation destroys the fact of local initiative to provide further to the end that they can get a good educational system set up in a local school district. I believe that the authors of the tobacco tax law had in mind of stimulating local interest, public interest, along with providing a token towards

building up the school system. Therefore, I oppose this amendment.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Buckalew be adopted by the Convention?" All those in favor of adopting 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 7? If not, are there amendments to Section 8? Mr. Coghill.

COGHILL: I have an amendment, Mr. President.

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

CHIEF CLERK: "Section 8, after the word 'question' on line 12, strike period and insert a comma, delete 'Additional' and 'may' and insert 'to' in sentence inserted by Committee amendment."

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

COGHILL: I move and ask unanimous consent for the adoption of the amendment, Mr. President. I have the mimeographed sheet here that was adopted, and that was the one that I was amending. It would read, "The votes cast by voters qualified to vote on the question, requirement and qualifications to be provided by law."

PRESIDENT EGAN: The Chief Clerk will please read that portion of the section as it would read if the proposed amendment was adopted.

CHIEF CLERK: "No debt shall be contracted by or on behalf of the state or any political subdivision thereof unless the debt shall be authorized by law for capital improvements specified therein and be approved by a majority of the votes cast by voters qualified to vote on the question, requirements and qualifications to be provided by law."

PRESIDENT EGAN: Is there objection to Mr. Coghill's unanimous consent request?

BUCKALEW: I'll object.

PRESIDENT EGAN: Objection is heard. Is there a second?

KNIGHT: I'll second the motion.

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

COGHILL: Mr. President, there was quite a lot of lengthy discussion on this subject and I thought by my amendment, it would just clarify the requirements and qualifications to be provided by law. Otherwise it would just state that the votes cast by voters qualified to vote on the question and there is still no reference to what the qualifications are and then there was an additional sentence that said, "Additional requirements and qualifications may be provided by law." I was just trying to clarify the intent of the Convention as to the amendment that was made by Mr. Cooper.

HELLENTHAL: Would you read your amendment again?

COGHILL: It says, "votes cast by voters qualified to vote on the question, requirements and qualifications to be provided by law". Take out the "additional" requirements and just provide that "requirements and qualifications are to be provided by law". In other words, leave it up to the legislature.

HERMANN: May I ask Mr. Coghill a question?

PRESIDENT EGAN: Mrs. Hermann.

HERMANN: Mr. Coghill, do you mean to leave it entirely to the legislature or to the initiative and referendum, also? That is also going to pass law, you know.

COGHILL: "To be provided by law" and then an initiative law, a referendum law is a law.

HERMANN: The second time you said "by the legislature". I wanted to make sure --

COGHILL: "Provided by law".

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Coghill be adopted by the Convention?" All those in favor of adopting the proposed amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 23 - Boswell, Coghill, Cooper, Cross, Emberg, H. Fischer, Hurley, Johnson, Kilcher, King, Laws, Londborg, McNealy, Marston, Metcalf, Peratrovich, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sweeney.

Nays: 26 - Awes, Barr, Buckalew, Collins, Davis, V. Fischer, Gray, Hellenthal, Hermann, Hinckel, Knight, Lee, McCutcheon, McLaughlin, McNees, Nerland, Nolan, Nordale, Poulsen, Reader, Riley, Taylor, Walsh,

White, Wien, Mr. President.

Absent: 6 - Armstrong, Doogan, Harris, Hilscher, Sundborg,
VanderLeest.)

CHIEF CLERK: 23 yeas, 26 nays and 6 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed amendment has failed of adoption. Are there other amendments to Section 8? Mr. Riley.

RILEY: Mr. President, for the last time today I shall presume on the Convention's time by asking for a recess of five minutes.

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

RECESS

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

ROBERTSON: I would like to make an amendment to Section 8. It is very simple. It is only two words and I'll make it orally, if I may. It is in the amendment offered by the Committee which has been adopted. At the end of the line reading "additional requirements and qualifications" insert the two words, "of voters" and I so move.

PRESIDENT EGAN: After the word "qualifications" Mr. Robertson?

ROBERTSON: That is right.

PRESIDENT EGAN: Mr. Robertson so moves.

TAYLOR: I ask unanimous consent.

PRESIDENT EGAN: Mr. Taylor asks unanimous consent that the proposed amendment be adopted. Is there objection? If there is no objection, the proposed amendment is ordered adopted. Mr. Gray.

GRAY: May I address a question to Mr. Robertson?

PRESIDENT EGAN: If there is no objection, you may.

GRAY: In your opinion when you have additional requirements and qualifications of voters, do you mean to include in that the percentage of voters?

ROBERTSON: No. I agree, apparently, with the others. I heard Mr. Davis and others discussing it. I think this specifically limits to a majority, the legislature can't increase it to a

2419

65 per cent or 55 per cent. The majority is just one over one-half but this way we then know if we can qualify the voters so they will have to be property owners.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I have an amendment to Section 8. May I present it orally?

PRESIDENT EGAN: If there is no objection.

COOPER: Insert the words "not less than" before the words "a majority". I removed them in my original amendment but it was also tied in with some insertions; therefore, I now move that the phrase "not less than" be inserted before "a majority".

HELLENTHAL: I'll second the motion.

PRESIDENT EGAN: Was your original amendment, was it adopted, Mr. Cooper?

CHIEF CLERK: Yes, it was.

HELLENTHAL: I ask unanimous consent that the motion be adopted.

PRESIDENT EGAN: It is actually a suspension of the rules, but under a unanimous consent request it can be done. Is there any objection to the unanimous consent request? If not, then the proposed amendment is ordered adopted. Does the Chief Clerk have it in the proper place?

CHIEF CLERK: Yes.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: I'm still not clear on this and I would like to ask any one of the Committee or whoever would care to answer it for me, that on that "votes cast by voters qualified to vote on the question" -- where and how and in what manner are we providing for those qualifications? Are they property owners, are they just legal voters of the state or of the town? You are a legal voter of a community if you have lived there for 30 days. Is that what it means or does it mean you have to be a property owner to vote on it?

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, that does not mean that you have to be a property owner. It means that you must be a citizen of the United States, a resident of Alaska for over one year. Let me go at it again -- an actual and bona fide resident of Alaska for over one year, 19 years of age or over, a resident 30 days in the voting precinct in which you vote, not disqualified from

voting by virtue of being unable to read or write, not disqualified from voting by any other provision of the law. Those are the qualifications of voters.

UNIDENTIFIED DELEGATE: You mean in a state election?

HELLENTHAL: In a state election, state and local elections, and I refer to the article on elections and suffrage which starts out, "The qualifications for voters in all state and local elections shall be as follows..." and then they list them. Now property qualification is not such a qualification nor should it be because when you vote for your legislators and everything, property has nothing to do with it but under the provisions of this language where it says, "additional requirements and qualifications of voters may be provided by law", the legislature may properly, if it sees fit, impose a property qualification as an additional qualification but we are leaving it up to the legislature in the case of bond elections on the state or local level.

COGHILL: That answers my question. What I wanted to know was -- that was the purpose of my amendment -- I wanted to know whether with the "additional" requirements set in there, would it allow the legislature to provide for residency or property holding section in a locality where a bond issue is being circulated.

HELLENTHAL: Yes.

COGHILL: Thank you.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess until 3:40.

RECESS

PRESIDENT EGAN: The Convention will come to order. Are there other amendments to be offered to Section 8? Mr. Riley.

RILEY: Mr. President, I have one to offer to Section 8, but I would like the benefit of full attendance if possible.

BUCKALEW: Mr. President, I move for a five-minute recess.

PRESIDENT EGAN: If there is no objection the Convention will stand at recess for one minute. The Convention is at recess.

RECESS

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

RILEY: Mr. President, at the risk of trying the patience of everyone in the room, I have submitted an amendment which, in substance, was submitted this morning under the names of

half a dozen or more delegates. I haven't had an opportunity to check with each of them since, so unfortunately it bears my name alone. The amendment, which was passed out a few minutes ago, breaks the subject matter into two sections, one confined solely to state indebtedness and the other to political subdivisions. Strike all of Section 8 as we now have it and substitute these two sections for Section 8. Now I don't profess to be a short-term expert in any sense in the field of finance. However, certain shortcomings of language were called to my attention yesterday and again today, and I believe that many of those who joined with me earlier had the same feeling that improvement was possible. There are two features which should receive special attention in considering this amendment. As a matter of fact, I haven't asked for its adoption and I so move.

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

CHIEF CLERK: "Strike Section 8 and substitute the following two sections and renumber the remaining sections:

'Section 8. No debt shall be contracted by or in behalf of the State unless the debt shall be authorized either by a two-thirds vote in each house of the legislature, or by a majority vote in each house with ratification by a majority of the qualified voters of the state voting on the question, provided that the State may by law contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural catastrophes, or redeeming outstanding indebtedness of the State at the time this constitution becomes effective.'

'Section 9. No debt shall be contracted by or in behalf of any political subdivision of the State, except for capital improvements and then only upon approval of at least a majority of those voting on the question and qualified to vote as prescribed by law.'"

PRESIDENT EGAN: Do you so move the adoption of the amendment, Mr. Riley?

RILEY: I do, Mr. President.

BUCKALEW: I'll second it.

PRESIDENT EGAN: Mr. Buckalew seconds the motion. Mr. Riley.

RILEY: Now this provision which starts on line 2 of the proposed amendment, stating "either by two-thirds vote in each house of the legislature or by a majority vote in each house with ratification..." is of course new matter, new concept in this discussion. While I personally won't press that issue too vigorously, I would like to point out that other states have

adopted it and apparently with full success as to the marketing of their obligations. From the Hawaiian Manual I read: "Massachusetts and South Dakota set up barriers to borrowing by requiring a two-thirds vote in each house upon all debt-creating legislation, while in Delaware three-fourths of the legislators must approve bond measures. Among the constitutions which explicitly provide for a state debt, only the Maryland constitution sets no debt limit or super-majority vote, qualifying legislative carte blanche only by the requirement that when a debt is incurred, provision be made concurrently for taxes to pay interest and principal." In this respect I submit only that this thought is not new, that it has been applied successfully elsewhere. Among other thoughts I have had on the subject and which have been confirmed by others is the statement on our Section 8 as it now stands that, "No debt shall be contracted by or in behalf of the state or any political subdivisions thereof unless the debt shall be authorized by law." That question arose last evening. There was doubt in the minds of some of the delegates whether "by law" meant that it was necessary that the legislature authorize the contracting of debt by lesser political subdivisions. I think that it was reasonably well resolved here on the floor last night. Understanding was reached that this would allow ordinance but it does not so state, it is not clear and I think that question is obviated in the amendment now before us. To pursue my reference to Section 8 as it now stands, the language "a majority of the votes cast by voters qualified to vote" has created doubt also as to the necessity of the voters of the state having to authorize capital improvements in Anchorage or Fairbanks or in Juneau. If such doubts are valid I would say that those two are cleared up in this proposed amendment now under discussion. I do think that handling the matter in two separate sections to differentiate between the two levels of government is a far cleaner approach and much more readily understood.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President, I speak in opposition to the amendment. As to the first section, I think there should be a debate on the subject of whether or not two-thirds vote in each house of the legislature or an alternative proposition, that is, ratification by the majority of the qualified voters. I think there should properly be a debate on that, but when we get into Section 2, or now called Section 9 of this amendment, it is not Style and Drafting as is suggested. There are basic omissions in Section 9 that I have before me over what we have just adopted. I have listed three and I have only had a few minutes to look at it. There is a complete omission of an authorization by law to precede the submission of the question to the qualified voters. Now it was explained that that was not meant that state law, the operation of state law precede the submission on the local level but I see absolutely no justification for omitting any reference to "unless the debt shall be authorized by law" from the language.

There is also a complete omission of the requirement that was voted by this body that the legislature could prescribe additional qualifications for voters. Now this is not at all clear in Delegate Riley's amendment and "qualified to vote as prescribed by law". Now that could mean the normal qualifications of voters for governor, senators, members of the house of representatives, and it could very easily be so construed when what is meant by this body is that additional qualifications including a property qualification can be included if the legislature so desires. Under this Riley amendment I don't think it is clear at all that the legislature could prescribe a property qualification if they wanted to and we are going to substitute uncertainty and ambiguity for the clarity of the amendments that were adopted a few moments ago. And the third thing and I think the most important thing that is omitted in the new Section 9 is this -- you will recall the original one, the one that is now adopted requires that a "majority of the qualified voters of the respective political subdivisions approve the bond issue". Under the Riley amendment those others are completely omitted. This brings me back to some remarks that Delegate Fischer made late last night. He said that he didn't like the provisions of the committee report because it would interfere with the borough plan. Now I think the interference with the borough plan is completely removed because the words "of the respective political subdivisions" have been removed. This amendment that we now have before us would permit the voters of say, an overlapping district a portion of them only could bond the whole district. I think it is dangerous. It substitutes not only uncertainty and ambiguity but it substitutes a possibility where a portion of a political subdivision could bind the adjoining areas to an indebtedness. I don't think it is sound, I think it is definitely unclear as to especially this second portion that deals with local government. Now when we get up on the state level, I don't operate on the state level too often and that is another problem as to when the new state shall be able to incur indebtedness. That is a new problem there which should be debated but to throw in with the "baby's bath" an entirely new version of local government indebtedness with three omissions, all of which are going to promote trouble, is too much for me.

PRESIDENT EGAN: Mr. Robertson.

ROBERTSON: Mr. President, I note another omission; it seems to me, from Section 9 by Delegate Riley's amendment, we have just adopted, put back in the words "not less than a majority" and he has a bare majority. Another thing I don't see is what is the use of having the clause commencing with "provided" in the fifth line in Section 8, at all. The reason I take it that the Committee put the first one in their amendment, was because the debt must be authorized by capital improvements specified therein so they made an exception by saying that the state "may by law contract debt for the purpose of repelling invasion..." etc. Now, there is no such condition preceding in Section 8 so

I don't see any sense at all in having the language "provided" because the first four and one-half lines give them authority to create any debt if they create it according to this proviso and that could be a debt to repel invasion or put down war or anything else, so I can't see the necessity of having that "provided" clause in there.

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

BUCKALEW: Mr. President, I am going to only confine my remarks to Section 8. I want all the delegates to seriously consider Section 8. I think it does two things. It provides two different ways by which the state can incur indebtedness for capital improvements; one, by a vote of two-thirds of each house; the other method is by a majority of each house and then referring it to the people. Now the only reason that you have any limitations or restrictions on the legislature is to prevent the legislature from impairing the credit of the state. You don't want to get a runaway legislature and deplete the treasury or obligate the people for something that they can't pay for. Now it seems to me that if you are going to leave it up to a two-thirds vote of each house, that we are protecting the state more adequately than we are with the present Section 8 as we know it because you are going to have to get 14 members of the senate to go for this capital improvement. You've got another point. If you pass some sort of act to provide for capital improvements and you don't get the two-thirds majority in either the senate or the house, then you refer it to the people. I think the people are going to give that particular matter more consideration because they are going to know that one of the houses of the legislature turned it down. There is another consideration. I think it is going to save the State of Alaska a lot of money because initially you are going to have all kinds of items to vote on. There is going to be a lot of capital improvements that the new state is going to have to take care of and the people are going to be voting on all kinds of items. People from Naknek are going to be voting on some kind of improvement in Juneau and vice versa, and people are not going to know too much about it, but the legislature is going to be adequately and well-informed on any issue that comes up in this sort of nature and I think that two-thirds of each house will more adequately protect the credit of the state and I think this Section 8 should be supported and should be adopted; and another consideration, I think it is going to save the state a lot of money by providing that the legislature can adopt it on a two-thirds vote and I think that if you send all of these things out to the people, they're not going to understand it as well as the legislature and I think that as far as the bond buyers are concerned, my guess is that they will be more satisfied with Section 8 as Mr. Riley has drawn it than with the way that we now have it.

PRESIDENT EGAN: Mr. Londborg.

LONDBORG: I can see some advantages in having the two sections where you specify the local political subdivisions separately. However, I can also see some of the questions raised by Mr. Hellenthal and I have an amendment that I believe will clarify that and in this amendment we merely insert between the word "vote" and "as" on the last line, "on the particular issue", and that would mean then the ones "qualified to vote on that particular issue."

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to the amendment.

CHIEF CLERK: "Section 8, last line, insert after 'vote' the words 'on the particular issue'."

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

LONDBORG: I move the adoption of the amendment to the amendment and also would like to ask unanimous consent that in addition to that, instead of the words "at least" put "not less than" and that will conform with the original proposal by the Committee.

PRESIDENT EGAN: Then your proposed amendment to the amendment would include that, also, is that correct?

LONDBORG: That is right, Mr. President, if there is no objection and it would then read "...then only on approval of not less than a majority of those voting on the question and qualified to vote on the particular issue as prescribed by law." Now, that would give the legislature or whoever makes the law the right to specify what percentage of majority, if it is 50 per cent or 65 per cent or whatever they may wish, it may vary in the future, it would give the law the chance to specify whether they be property holders or not, it would also give them the right to specify who shall vote on the particular issue if it be those living in that particular subdivision, they are entitled to vote, or whoever it might be, leaving it entirely up to the law to specify but I think that should take care of nearly all of the objections that have been raised to this section.

PRESIDENT EGAN: You ask unanimous consent for the adoption of the amendment or did you so move?

LONDBORG: I so move that it be adopted.

PRESIDENT EGAN: Mr. Londborg so moves. Is there a second to the motion?

KNIGHT: I'll second the motion.

PRESIDENT EGAN: Mr. Knight seconds the motion. Mr. White.

WHITE: By a little stretch of the imagination I would like to speak on the amendment to the amendment. It is probably a good amendment but I would like to suggest that we deal with the basic differences between this proposal, this proposed Section 8 and Section 9, and the existing Section 8. First of all, vote it up or vote it down. If by chance it is voted up, then get in to amending it because if we take this tack, we could be here all night.

LONDBORG: Point of order, Mr. President.

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

LONDBORG: I believe that a person has a right to improve an amendment so that if it carries you are voting on the whole thing. Should this amendment as submitted by Mr. Riley carry and these not. I certainly would not want to have voted for the original amendment. I believe the issue should be on the amendment to the amendment.

PRESIDENT EGAN: Your point of order is well taken. The argument should be on the proposed amendment to the amendment. Mr. Hellenthal.

HELLENTHAL: I raise a point of order.

PRESIDENT EGAN: Your point of order.

HELLENTHAL: This Section 9 permits debts for capital improvements with no restriction. It says, "No debt except for capital improvements..." So capital improvements is no restriction.

PRESIDENT EGAN: Mr. Hellenthal, that would not be a point of order. The question now is on the proposed amendment to the amendment. Is there further discussion on the amendment to the amendment?

UNIDENTIFIED DELEGATE: Could we have it read please?

PRESIDENT EGAN: The Chief Clerk will please read the proposed section as it would read if the proposed amendment to the amendment were adopted.

CHIEF CLERK: "Section 9. No debt shall be contracted by or in behalf of any political subdivision of the state, except for capital improvements, and then only upon approval of not less than a majority of those voting on the question and qualified to vote on the particular issue as prescribed by law."

PRESIDENT EGAN: Mr. White.

WHITE: Are we voting on the amendment to the amendment?

PRESIDENT EGAN: We are voting on the amendment to the amendment. Mr. Kilcher.

KILCHER: Mr. President, may I address a question to Mr. Londborg?

PRESIDENT EGAN: If there is no objection, Mr. Kilcher, you may address your question.

KILCHER: Mr. Londborg, "as prescribed by law", is that pertaining to the particular question or to the qualification of the voters?

LONDBORG: As I would take it, it would specify those who are qualified to vote. That is the way I intend the amendment to be. "The majority of those voting on the question and qualified to vote on that particular question." One law would tell us then who could vote on that one and then whatever majority is up to vote, that is fine.

KILCHER: I wanted to get this intent on the record, it is not plain from the language.

LONDBORG: My purpose of the amendment is merely to clear up what I think is an objection to the amendment and then beyond that you can argue the main issue. It is just to clear up what I believe is an objection.

KILCHER: In that case I am for the amendment.

PRESIDENT EGAN: The question is, "Shall the proposed amendment to the amendment be adopted by the Convention?" All those in favor of adopting the proposed amendment to the amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll.

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

Yeas: 36 - Awes, Barr, Boswell, Buckalew, Coghill, Cooper, Cross, Davis, Emberg, H. Fischer, V. Fischer, Harris, Hermann, Hinckel, Hurley, Kilcher, King, Lee, Londborg, McNealy, McNees, Marston, Nordale, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, Wien, Mr. President.

Nays: 14 - Collins, Hellenthal, Johnson, Knight, Laws, McCutcheon, McLaughlin, Metcalf, Nerland, Nolan, Peratrovich, Poulsen, Robertson, White.

Absent: 5 - Armstrong, Doogan, Gray, Hilscher, VanderLeest.)

ROBERTSON: Mr. President, I would like to change my vote from

"yes" to "no".

PRESIDENT EGAN: Mr. Robertson changes his vote from "yes" to "no".

MCNEES: Mr. President, I would like to change my vote from "no" to "yes".

PRESIDENT EGAN: Mr. McNees changes his vote from "no" to "yes". The Convention will come to order while the Chief Clerk tallies the ballot.

CHIEF CLERK: 36 yeas, 14 nays, and 6 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment to the amendment has been adopted. Mr. Riley.

RILEY: Mr. President, referring to Section 9, line 2, I now ask unanimous consent that the comma after the word "state" be omitted.

PRESIDENT EGAN: Mr. Riley asks unanimous consent that the comma after the word "state" be omitted. Is there objection? Hearing no objection it is so ordered. Mr. Fischer.

V. FISCHER: Mr. President, in line with Mr. Robertson's suggestion of before, I would like to move that in line 2 of Section 8, after the word "authorized" the following three words be inserted: "for capital improvements". I ask unanimous consent.

PRESIDENT EGAN: Mr. Fischer asks unanimous consent for the adoption of the proposed amendment. Is there objection?

UNIDENTIFIED DELEGATE: Could we hear the amendment again?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Section 8, line 2, after 'authorized', the following three words, 'for capital improvements' be inserted."

PRESIDENT EGAN: Did you still ask unanimous consent, Mr. Fischer?

V. FISCHER: Yes.

PRESIDENT EGAN: Is there objection to the adoption of the proposed amendment? If there is no objection the proposed amendment is ordered adopted. Mrs. Nordale.

NORDALE: Mr. President, may I ask Mr. Hellenthal a question?

PRESIDENT EGAN: You may, Mrs. Nordale.

NORDALE: Was your very strong objection to this amendment based upon the fact that it did separate the two problems -- state debt from local debt?

HELLENTHAL: No. I think as a matter of style, that state debt should be separated from local debt but I object to the three omissions that were made in the separated portion dealing with local debt.

NORDALE: That could be corrected by amendment, couldn't it?

HELLENTHAL: Then we are right back to where we started.

NORDALE: Except that isn't it clearer to have them separated?

HELLENTHAL: As a matter of style, yes. But I think that we are amending the action we have already taken by three glaring omissions made in this Section 9.

NORDALE: Could those be remedied by amending?

HELLENTHAL: Sure.

NORDALE: Do you think it is better to handle them in a separate package?

HELLENTHAL: I think Section 9 should be stricken in this amendment. We have already acted on the matter, we have adopted a very sensible rule with regard to debt on the local level and I see no reason to go through the agony all over again.

PRESIDENT EGAN: Mrs. Nordale.

V. FISCHER: Could we have a recess, Mr. President?

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. We have before us the proposed amendment as offered by Mr. Riley to Committee Proposal No. 9. Is there further discussion? Is there anyone else who wishes to be heard before Mr. Riley closes?

RILEY: I didn't have closing in mind as much as amendments to the amendment, after consultation with Mr. Hellenthal and others. First it be that there be added to Section 9 the sentence, "Additional requirements and qualifications of

voters may be provided by law."

PRESIDENT EGAN: You offer that as an amendment to the amendment?

RILEY: I do. It is the language adopted earlier, adopted with respect to the present Section 8. "Additional requirements and qualifications of voters may be provided by law.

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

RILEY: I ask unanimous consent for its adoption.

PRESIDENT EGAN: Mr. Riley asks unanimous consent that the proposed amendment be adopted. Is there objection? Hearing no objection, the amendment is ordered adopted. Mr. Johnson.

JOHNSON: Point of inquiry, Mr. President. Would you say amendment?

PRESIDENT EGAN: Amendment to the amendment.

RILEY: A second point, Mr. President, would be the insertion after the word "question" on the last line of Section 9, "within the respective political subdivision". I ask unanimous consent for its adoption.

PRESIDENT EGAN: Mr. Riley asks unanimous consent for the adoption of the proposed amendment to the amendment as amended. Will the Chief Clerk please read the proposed amendment to the amendment.

CHIEF CLERK: "In new Section 9 insert the following after the word 'question': 'within the respective political subdivision'.

PRESIDENT EGAN: Unanimous consent has been asked. Is there objection to the proposed amendment to the amendment? Mr. Hellenthal.

HELLENTHAL: That is singular, is it not?

RILEY: Yes.

PRESIDENT EGAN: Is there objection to the adoption of the proposed amendment to the amendment? If there is no objection the amendment is ordered adopted. Mr. Barr.

BARR: I wonder why we are going to all this trouble with all these minor amendments to the amendment. We are using up a lot of time and every time we amend this amendment it gets closer to our original Committee report. If we like the original one why not accept it? There is a difference in that Mr. Riley's amendment here separates the matter dealing

with the state and the matter dealing with the local subdivisions, but the Committee on Style and Drafting has authority to rearrange matters such as that. I don't see why we're bothering with this at all. It seems that we liked the original report. Why didn't we stick to it?

HELLENTHAL: Mr. Riley has one more amendment, I think.

PRESIDENT EGAN: Mr. Riley.

RILEY: I was deferring to the Chairman of the Style and Drafting for a statement of his authority on that. I doubt that it extends that far. The third proposed amendment to the amendment is the use of the language "unless authorized by law" to be inserted on the second line following the word "state". Now, subject to Mr. Hellenthal's views on this, I am in doubt as to that being the proper spot for its placement, lest we get in trouble with "except for capital improvements".

PRESIDENT EGAN: Mr. McNees.

MCNEES: I have a question. Does this pertain to Section 9 now?

RILEY: Yes, Section 9.

PRESIDENT EGAN: Where was that offered?

RILEY: It was offered following the word "state" on line 2, but I would like to direct a question to Mr. Hellenthal.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Well, I think the original said, "No debt shall be contracted by or in behalf of the state..." then come some commas and then you read, "unless the debt shall be authorized by law". I think we have it in precisely the same place as it was in the one that has been adopted.

RILEY: How about using it as a preface to that sentence?

HELLENTHAL: I have no objection to that.

RILEY: I would prefer that lest we get in trouble on the language covering capital improvements, and so suggest that the first sentence, or that Section 9 starts "unless authorized by law" and I ask unanimous consent for its adoption.

PRESIDENT EGAN: Mr. Riley asks unanimous consent for the adoption of the proposed amendment to the amendment as amended. Is there objection? If there is no objection the proposed amendment to the amendment is ordered adopted. Are there other amendments to the proposed amendment as amended? Mr. Smith.

SMITH: Mr. President, I don't have any amendment but I do feel that the major difference between the amendment as offered and the Committee section has not been brought out. The amendment allows a legislature by two-thirds vote to create a debt and personally I don't like that. I think the people should be allowed to vote on whether or not the state shall become indebted and the statement that the legislature is usually more informed on subjects of this kind than the people, I don't believe to be true. I don't think we would have to go very far back in the history of the Territory to bring out some very strong examples of actions by a legislature that would bear me out, and for that reason and that reason alone, I oppose the amendment.

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

DAVIS: Mr. President, I would like to ask Mr. Riley a question.

PRESIDENT EGAN: If there is no objection, Mr. Davis.

DAVIS: I am wondering if having put the "unless authorized by law" in the place you have put it, if you haven't now made it say that, "No debt shall be contracted except as provided by law except for capital improvements." Isn't that how it will read now?

RILEY: That is what is disturbing me and that is what prompted my query of Mr. Hellenthal a moment ago. I confess that I think your point is well taken.

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

RECESS

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

RILEY: I think we can all agree on one thing, that my initial reference to trying the patience was perhaps correct. We have, again I believe, come forward with a little improvement and I would read Section 9 as now proposed -- an amendment to the amendment. "Section 9. Unless authorized by law for capital improvements no debt shall be contracted by or in behalf of any political subdivision of the state and then only upon approval of not less than a majority of those voting on the question within the respective political subdivision and qualified to vote on the particular issue as prescribed by law. I won't read the last sentence.

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

RILEY: I ask unanimous consent for that rearrangement.

PRESIDENT EGAN: Mr. Riley asks unanimous consent that the proposed amendment to the amendment be adopted. Would the Chief Clerk please read Section 9 as it would appear.

CHIEF CLERK: "Section 9. Unless authorized by law for capital improvements no debt shall be contracted by or in behalf of any political subdivision of the state and then only upon approval of not less than a majority of those voting on the question within the respective political subdivision and qualified to vote on the particular issue as prescribed by law. Additional requirements and qualifications of voters may be provided by law."

PRESIDENT EGAN: Is there objection to the adoption of the proposed amendment to the amendment?

UNIDENTIFIED DELEGATE: May we have it read again, please?

PRESIDENT EGAN: The Chief Clerk will please slowly read the proposed Section 9 as it would read if the amendment to the amendment was adopted.

CHIEF CLERK: May I ask Mr. Riley a question?

PRESIDENT EGAN: You may.

CHIEF CLERK: What you do in this amendment is take out "except" and put "for capital improvements" after "unless authorized by law"?

RILEY: That is right, yes.

(The Chief Clerk again read the amendment to the proposed amendment.)

PRESIDENT EGAN: Unanimous consent has been asked for the adoption of the proposed amendment to the amendment. Is there objection? Hearing no objection the proposed amendment to the amendment is ordered adopted. Mr. White.

WHITE: Mr. President, I have an amendment to the amendment.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to the amendment as amended.

CHIEF CLERK: "Line 2 of the amended Section 8, strike 'either by a two-thirds vote in each house of the legislature or'."

WHITE: I move the adoption of the amendment to the amendment.

PRESIDENT EGAN: Mr. White moves the adoption of the amendment to the amendment.

MCNEES: I'll second it.

PRESIDENT EGAN: Mr. McNees seconds the motion. Mr. White.

WHITE: Mr. President, this gets us back to the point, I think. The major difference between the committee proposal as amended here all afternoon on the floor and this amendment to the amendment to the proposal is this matter of allowing debt to be incurred by a two-thirds vote in the legislature. In opening the argument for the adoption of this amendment, Mr. Riley said that it had the added feature of clearing up doubts, that apparently still remained in his mind anyway, as did the original committee proposal which really is a side issue. Those doubts can always be cleared up by amending the committee proposal as it now stands. The basic issue here is whether or not you want the incurrence of debt to be approved by the voters of the State of Alaska, or whether you do not, and I offer this amendment to get us back on the subject. It is the opinion of the majority of the Committee that such debt should be approved by the voters of the state as a minimum requirement. I think I am safe in saying the basic reason lying behind that is because incurring debt is different from most any other type of legislation in that it not only goes directly to the pocketbook of the people concerned, but all the people of the State, but also to the pocketbook of future generations and that is why, in my mind anyway, so many states, so many local political subdivisions, always require debt to be approved by the people. Now, Mr. Buckalew said that the only reason for putting restrictions on the legislature in this matter is that, the legislature might impair the credit of the state. That is true but I submit that a bond proposal to the people via referendum is the greatest way that you can take as a minimum requirement to insure that the credit of the state will not be impaired. How you can logically argue that you can take any better step to preserve the credit of the state than referendum I do not know. It has been said that not too many people voting on a referendum know what they are voting about. I think rather that when they are voting on money which they will have to repay, in which their children will have to repay, they know in their own minds very clearly whether they want to vote for that debt or not, whether or not they know an awful lot about the project that is anticipated should the debt be incurred. I think the basic question here is whether or not you want the people of the state to pass on an incurrence of debt or whether you want to leave it to the legislature.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: Mr. President, I would like to speak in favor of the amendment to the amendment. Allowing two methods by which a state or political subdivision may provide for bonded indebtedness cannot help but cause favoritism by the bond investment houses for one method or the other, and I think there is no doubt

but that this would result eventually in the bonds of the state being classed into two different categories and there is not much question, in my mind, which issue would take the lowest interest rate. There is no doubt, I think, but what a bond house would look upon those that were passed by a majority vote in each house with ratification by a majority of the qualified voters. They would certainly prefer that over bonds that had been just approved by two-thirds of the vote in each house of the legislature. Any of the delegates here who had experience -- and it would probably be on the city level -- of bond issues, will know the very critical attitude that bond houses take towards all bond issues and this is particularly true in Alaska. We are paying a penalty up here in interest rates. Many of our bond issues are, in many cases, safer than bond issues in the states that enjoy a very much more favorable interest rate and putting these two methods implies that we are trying to seek out the most expedient way at the time that the bond issue was required and I feel very certain that it would eventually result in two classifications on general obligations of the State of Alaska and I ask that this amendment to the amendment be voted for.

PRESIDENT EGAN: Mr. Fischer.

V. FISCHER. Mr. President, I disagree with Mr. Nerland that we're setting up two separate classifications of bonds which would be worse than what is being set up in the committee proposal. The committee proposal in Section 10 authorizes the floating of bonds by public corporation when the only security from such indebtedness is the revenue of the enterprise or public corporation. The Committee, in putting that in, has specifically told us in the commentary that they're condoning a practice which is used in every state as a means of getting around this kind of bonding restriction as we currently have in Section 8. In other words, we put the provision in Section 8, it is a cumbersome provision. We are telling the state that that of course is of too much bother. Therefore, go ahead and create a separate corporation; if you want to build highways, set up a toll road, set up a separate corporation. If you want to put up public buildings, set up a separate corporation and many states have done that, float bonds and then the state purchases those buildings from that corporation. What happens in those cases? In those cases the credit of the state is not pledged, the interest rates are much higher. In other words, if we follow that procedure we are leaving ourselves open to much higher rates than anything that would be created in authorizing the enactment of bond legislation by two-thirds vote because when we do it by two-thirds vote the credit of the state is pledged. I would also like to point out that in the past anyone who has followed a bond market knows full well that it is not the procedure for the enactment of bond legislation that will govern the interest rates, it is simply the ability to repay and the faith that the bond buyers have in the

governmental entity. We have the picture perfectly right here in Alaska. What has been the interest rates in Alaskan cities? Over recent years it has been running 4 3/4 per cent to 5 per cent. Only within the last year or so the city of Fairbanks had to sell \$3,000,000 worth of bonds and I think at an interest rate at 4 3/4 per cent. That is phenomenal. The average interest rates in the states run around 2 1/4 per cent, 2 per cent, 1 3/4 per cent. At the same time the city of Anchorage only last summer sold bonds at an interest rate of 3.67 per cent. That wasn't done because the law under which those bonds were sold are any different than those at Fairbanks. It was done because they could show the bond buyers that they have a secure investment. That is the only thing that will bring these bond rates down. What we are trying to do here in the adoption of the two-thirds vote in each legislature for capital improvements is to provide means whereby we won't force the state into circumvention of the intent that we have. It won't force the state into a means of selling bonds to establishments and separate corporations which will, in the end, force a much higher interest rate on the taxpayers of Alaska and thus will cost us more in the long run than anything that would be contained in this. I think just in terms of our pocketbooks we should vote down the amendment to the amendment.

PRESIDENT EGAN: Is there anyone else who wishes to be heard? Mr. Riley.

RILEY: I wish only to state, even though the debate seems interminable, I think it is clearly within the memory of everyone that in introducing this subject initially this afternoon I called specific attention to this particular feature. It is at variance with Section 8 as we now have it. To reply just briefly to the suggestion of Mr. Smith, someone today may have suggested that the legislature might be better informed than the people but certainly I didn't venture that opinion.

PRESIDENT EGAN: Mr. White.

WHITE: Mr. President, just in closing, briefly, in answer to Mr. Fischer I think he has brought a side issue in here by mentioning Section 10. If Mr. Fischer can draft language that would eliminate the necessity for Section 10, I'm sure the Committee would go for it. The reason Section 10 is in there is because it has been found that no matter what you do, as far as the Committee can find, that way can be found to get around debt limitations, and, therefore, if in order to avoid suits in court you might just as well make the authority clear. I would suggest to you, if you don't like Section 10, to work on drafting some language that could eliminate it effectively. In any event, should your two-thirds rule in the legislature apply, you could still find it out via Section 10 if you couldn't muster two-thirds vote, so that it seems to me that all this reference to Section 10 is a little superfluous. Actually, if

bonding the state via a special authority should result in higher interest rates, that is merely an added inducement to go back to the referendum where such issues ought to be. And secondly, if the legislature wants to take this end way around of getting at it and going to special authorities they are subject to check by the people, the people will know what's being done and they will react accordingly if they are not in favor of it. I think the basic issue here is, and was and remains, do we want the people to vote on inebting themselves and their children and their children's children or do we not?

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

UNIDENTIFIED DELEGATE: Please read the proposed amendment again.

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment to the amendment.

CHIEF CLERK: "Strike 'either by a two-thirds vote in each house of the legislature or'."

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

POULSEN: Roll call.

PRESIDENT EGAN: The Chief Clerk will call the roll.

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

Yeas: 29 - Boswell, Coghill, Collins, Cooper, Cross, Davis, Emberg, Gray, Hellenthal, Hinckel, Hurley, Johnson, Kilcher, Knight, Laws, McLaughlin, Metcalf, Nerland, Nolan, Peratrovich, Poulsen, Reader, Robertson, Rosswog, Smith, Stewart, Sweeney, White, Wien.

Nays: 19 - Awes, Barr, Buckalew, V. Fischer, Harris, Hermann, King, Lee, McCutcheon, McNealy, Marston, Nordale, Riley, R. Rivers, V. Rivers, Sundborg, Taylor, Walsh, Mr. President.

Absent: 7 - Armstrong, Doogan, H. Fischer, Hilscher, Londborg, McNees, VanderLeest.)

HERMANN: Mr. President, I would like to change my vote to "no".

PRESIDENT EGAN: Mrs. Hermann changes her vote to "no". The

Convention will come to order while the Chief Clerk tallies the ballot.

CHIEF CLERK: 29 yeas, 19 nays, and 7 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment to the amendment is ordered adopted. Are there other amendments to the proposed amendment, or is there further discussion? Mr. Metcalf, you may offer your amendment to the amendment. Would the Chief Clerk please read the proposed amendment to the amendment.

CHIEF CLERK: "Line 4, delete 'a majority of the qualified voters of the state voting on the question' and insert in lieu thereof the following: 'not less than the majority of the votes cast by the voters qualified by law to vote on the question'."

PRESIDENT EGAN: Mr. Metcalf.

METCALF: I move for its adoption and ask unanimous consent.

PRESIDENT EGAN: Mr. Metcalf moves for the adoption of the proposed amendment and asks unanimous consent. Would the Chief Clerk please read that sentence as it would read if the proposed amendment was adopted.

CHIEF CLERK: "No debt shall be contracted by or in behalf of the state unless the debt shall be authorized for capital improvements by a majority vote in each house with ratification by not less than the majority of the votes cast by the voters qualified by law to vote on the question."

PRESIDENT EGAN: Unanimous consent has been asked for the adoption of the amendment. Is there objection?

V. FISCHER: I object.

METCALF: I so move.

PRESIDENT EGAN: Objection is heard. Mr. Metcalf so moves. Is there a second?

KNIGHT: I'll second it.

PRESIDENT EGAN: Mr. Knight seconds the motion. Mr. Metcalf.

METCALF: I feel that this part of the constitution is going to be acceptable to the people next April, especially those folks who are property holders. I think there should be some additional qualifications put on that phrase "qualified voters" on line 4. I like it to concur in the old Section 8. It isn't written in king's English but leave it up to the legislature and I'm willing to trust the legislature and I definitely don't like

this phrase in here of the question of voting indebtedness being left up merely to qualified voters. I think there are many of us who came years ago, some of us came just last year who had faith in the country to invest our money in businesses, homes, actual buildings, and this phrase "qualified voters" could mean a class of people who are transients, who may live on our military bases, have been here for a year, and according to Mr. Riley's amendment will be qualified to vote on incurring indebtedness. I am strictly opposed to it.

PRESIDENT EGAN: Mrs. Nordale.

NORDALE: Mr. President, may I ask Mr. Metcalf a question?

PRESIDENT EGAN: If there is no objection, Mrs. Nordale, you may ask your question.

NORDALE: Mr. Metcalf, what kind of restrictions are usually placed on the qualifications for voting on a state debt?

METCALF: I couldn't answer that, Mrs. Nordale. I do know that down in our part of the country, I believe the city of Seward, Mr. Hellenthal may be able to correct me, I think it is 65 per cent of the property owners that vote on general bonds and I think everyone can vote on revenue bonds.

NORDALE: That is within a city?

METCALF: That's within a city. I kind of like that way.

NORDALE: Would you say then that only people who own property in the state, even though they pay income tax, school tax, tobacco tax, and all the other taxes should be allowed to vote on state debt?

METCALF: I think there should be some property qualifications as a part of the checks and balance system, I think there should be some qualification or indication that they are going to be here and live with us for awhile.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: This is the same as Mr. Cooper's amendment that was voted upon favorably by the delegates a few minutes ago, is it not?

METCALF: Almost the same, Mr. Hellenthal.

HELLENTHAL: I think you put in just two extra words, "by law" but they don't change the effect of Mr. Cooper's amendment. This is identical then?

METCALF: Almost.

PRESIDENT EGAN: Mr. Victor Fischer.

V. FISCHER: I would like to point out that the language in the proposed Section 8 that is supposed to be deleted by Mr. Metcalf's amendment is exactly that we had in the original committee proposal before Mr. Cooper's and all the other amendments. Those other amendments were required because in one section we were dealing with local government and with the state bonding indebtedness. I think that where we have separated them, this is perfectly clear language as it should be.

PRESIDENT EGAN: The question is, "Shall the proposed amendment to the amendment as offered by Mr. Metcalf be adopted by the Convention?" All those in favor of adopting the proposed amendment to the amendment will signify by saying "aye", all opposed will signify by saying "no". The Chief Clerk will call the roll.

MCNEES: May I be excused from voting based on the fact that I was out of the room when the question was called?

PRESIDENT EGAN: You may be excused.

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

Yeas: 8 - Coghill, Kilcher, McNealy, Metcalf, Nerland, Nolan, Robertson, Wien.

Nays: 41 - Awes, Barr, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hinckel, Hurley, Johnson, King, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, Marston, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, White, Mr. President.

Absent: 5 - Armstrong, Doogan, H. Fischer, Hilscher, VanderLeest.

Abstaining: 1 - McNees.)

CHIEF CLERK: 8 yeas, 41 nays, 5 absent and 1 abstaining.

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

MCCUTCHEON: Question on the main issue.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended be adopted by the Convention?" Mr. Barr.

BARR: I am going to vote against this amendment although

I agree with everything stated within the amendment. My vote is a protest on what we have been doing. We have spent the afternoon on getting back to the original committee proposal by amending an amendment.

UNIDENTIFIED DELEGATE: Roll call.

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

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

Yeas: 28 - Awes, Boswell, Buckalew, Coghill, Collins, Cross, Emberg, V. Fischer, Harris, Hermann, Hinckel, Hurley, King, Lee, Londborg, Nordale, Peratrovich, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Walsh, White, Mr. President.

Nays: 22 - Barr, Cooper, Davis, Gray, Hellenthal, Johnson, Kilcher, Knight, Laws, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Poulsen, Reader, Robertson, Taylor, Wien.

Absent: 5 - Armstrong, Doogan, H. Fischer, Hilscher, VanderLeest.)

CHIEF CLERK: 28 yeas, 22 nays and 5 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment as amended is ordered adopted. Mrs. Hermann.

HERMANN: Before anybody gets the notion to make a motion to recess I want to bring up a matter on which I spoke Saturday, I think, about the desirability of breaking the weekly night sessions by not meeting at night either on Wednesday or Thursday. I realize we can't make a motion to that effect but several people are anxious to make or break engagements they have already made for whatever day we do decide to break the night sessions on. I don't know if we are going to decide it or not but I think it would be a good idea if we could have a show of hands on how many would be willing to break this weeklong night session streak by not holding a night session either on Wednesday or Thursday and we could decide which later.

PRESIDENT EGAN: Mrs. Hermann, before we ask what the feeling of the delegates would be on that, the Chair would feel that perhaps Thursday night would be better because by the end of tomorrow night we might be pretty well along with some other proposal. It just seems to the Chair it might be better on Thursday night.

HERMANN: My only question was, whether we would be breaking again on Saturday night and if we do, Thursday would only give us one night in between while Wednesday would give us two.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, as a matter of principle of everybody being tired, etc., about this night session, I say stay in night session. We have got a lot of work to do and we don't have time to fiddle around. We spend a couple hours fiddling around here and we have adopted a whole section which was virtually identical to another section that we spent all day hassling with and I think if we have to fiddle around with this type of thing we had better stay in night session until we get our job done that the people sent us here to do.

PRESIDENT EGAN: What is the feeling of the delegates with relation to the subject? Mr. Ralph Rivers.

R. RIVERS: Mr. President, I think we should have one night off in the middle of each week to avoid getting "cabin fever" and we would make better progress.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I support Mr. Rivers' view. I think that the delay today was not only a matter of two hours but practically the whole day was caused by lethargy and inability to think, which I think is caused by overwork.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would ask that you ask for a show of hands on the nights of first, Wednesday and then, the night of Thursday as to which is preferred by a majority of the Convention.

MCNEES: First we should ask for a show of hands on whether we want a break or not.

PRESIDENT EGAN: Then the first question would be, by a show of hands please indicate as to how many of you wish to have a break either Wednesday or Thursday night? It seems that almost a majority of those present would desire a break, or more than a majority, some 30 arms it looks like to the Chair. How many would prefer Wednesday night in preference to Thursday night? It looks like 18 or 19 prefer a Wednesday. How many would prefer Thursday?

COGHILL: Mr. President, could we have a two-minute recess?

PRESIDENT EGAN: If there is no objection the Convention will be at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. We don't know where we are on this matter right now. Mr. Sundborg.

SUNDBORG: Mr. President, could we have another show of hands on whether we prefer Wednesday or Thursday?

PRESIDENT EGAN: All those who prefer Thursday night please raise your hand? All those who prefer Wednesday night please raise your hand? Thursday night has it and it will be the policy that the Convention will adjourn every Thursday evening at the close of the day that day. Are there other amendments to Section 8 of the proposal? Are there amendments to Section 9?

DAVIS: Is that the new Section 9?

PRESIDENT EGAN: Yes, the new 9. Pardon me, Mr. Davis, these will have to be renumbered again. Are there amendments to Section 10, then? Section 11? Section 12? Section 13? Section 14? Are there other amendments to be proposed for Committee Proposal No. 9? Mr. Fischer.

V. FISCHER: I would like to ask just one question of the Finance Committee, if I may.

PRESIDENT EGAN: You may ask your question.

V. FISCHER: Under the provisions that I assume will be in the transitional article, the laws of the Territory will continue under the state unless in conflict with the constitution. Now, at present we have a bonding act for municipalities, school districts, and public utility districts. That act will be in conflict with the constitution and I wonder if the Committee might consider the drafting of a transitional measure to continue bond acts until such time as they may be revised by the legislature.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: I would certainly be agreeable to that, Mr. Fischer.

PRESIDENT EGAN: Mr. Metcalf.

METCALF: Mr. Chairman, I believe I voted on the prevailing side on the question of the two-thirds vote of the house. Is that not right, Mrs. Alexander?

CHIEF CLERK: Yes.

METCALF: I serve notice of a reconsideration.

HARRIS: I move that we take up the matter of Mr. Metcalf's reconsideration at this time.

PRESIDENT EGAN: Mr. Harris moves that we take up the matter of Mr. Metcalf's reconsideration at this time. Is there a second to the motion?

NOLAN: I'll second the motion.

PRESIDENT EGAN: Mr. Nolan seconds the motion. The question is, "Shall the Convention consider the reconsideration of Mr. Metcalf at this time?" The Chief Clerk will call the roll.

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

Yeas: 39 - Awes, Boswell, Buckalew, Collins, Cooper, Cross, Davis, Emberg, V. Fischer, Gray, Harris, Hellenthal, Hinckel, Johnson, Kilcher, King, Knight, Lee, McCutcheon, McLaughlin, McNealy, McNees, Marston, Metcalf, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, R. Rivers, Smith, Stewart, Sundborg, Taylor, Walsh, White, Wien, Mr. President.

Nays: 10 - Barr, Coghill, Hermann, Hurley, Laws, Londborg, V. Rivers, Robertson, Rosswog, Sweeney.

Absent: 6 - Armstrong, Doogan, H. Fischer, Hilscher, Riley, VanderLeest.)

DAVIS: I'll change my vote to "yes".

PRESIDENT EGAN: Mr. Davis changes his vote to "yes".

BUCKALEW: I'll change my vote to "yes".

PRESIDENT EGAN: Mr. Buckalew changes his vote to "yes".

V. FISCHER: I'll change my vote to "yes".

PRESIDENT EGAN: Mr. Fischer changes his vote to "yes".

COOPER: I'll change my vote to "yes".

PRESIDENT EGAN: Mr. Cooper changes his vote to "yes". The Convention will come to order. The Chief Clerk is tallying the ballot.

CHIEF CLERK: 39 yeas, 10 nays and 6 absent.

PRESIDENT EGAN: So the "yeas" have it and the reconsideration of Mr. Metcalf's vote on the amendment that is referred to is before us at this time. Mr. Metcalf.

2445

METCALF: Briefly, Mr. Chairman, I'm a little ignorant on the customs so I will have to ask.

PRESIDENT EGAN: The amendment is before us once more, Mr. Metcalf, and open for discussion.

METCALF: At this time the question comes up on whether or not the constitution must be approved by a two-thirds vote in each house. I shall vote "yes" for it. I feel that in the matter of adjusting the checks and balances in our government that this will add another check, especially in voting indebtedness on the state. My philosophy that the voters who will vote indebtedness on the state ought to have a little property qualifications. Maybe I'm right and maybe I'm wrong, but anyway this is the way I'm going to vote.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Point of information. It is a little difficult for us to know without better identifying the amendment that he is talking about.

PRESIDENT EGAN: Will the Chief Clerk please read the amendment. It refers to the amendment by the whole -- was it the amendment to the amendment as offered by Mr. White?

CHIEF CLERK: Yes, the amendment to Mr. Riley's amendment, striking "either by a two-thirds vote in each house of the legislature or".

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

KILCHER: Point of information. A "no" vote will uphold the section as it is, the two-thirds requirement?

PRESIDENT EGAN: That is correct.

KILCHER: I think that Mr. Metcalf was mistaken when he stated that he would change to a "yes" vote.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: The amendment offered by Mr. White would strike the words "either by a two-thirds vote in each house of the legislature or" and it carried, the "yes" votes prevailed and so it carried and it was stricken. Now Mr. Metcalf has asked to reconsider. Anyone who favors having that "either by a two-thirds vote in each house" in there would, on this motion, vote "no".

MCLAUGHLIN: That is right.

NORDALE: May I ask a question, please?

PRESIDENT EGAN: You may ask a question, Mrs. Nordale.

NORDALE: This whole amendment has been adopted with that stricken. Supposing it should come back in. Will we have to vote on the whole thing again?

PRESIDENT EGAN: Mrs. Nordale, it would mean then that the amendment has been adopted. If Mr. White's amendment would be adopted now, it would mean that that is out of the original amendment, the section as it appears in Section 8 because the reconsideration, while we voted on the whole thing, the reconsideration of Mr. Metcalf on that particular amendment just brings that part of it before us for a vote.

NORDALE: My question is this though: the thing has been adopted; his amendment carried didn't it; that was stricken?

PRESIDENT EGAN: Yes.

NORDALE: Then the section was adopted. Then supposing on a second vote, supposing it is not stricken, then it goes back in, but it doesn't affect the final vote on the adoption of the amendment?

PRESIDENT EGAN: It would not.

NORDALE: I would like to know for sure before I vote.

PRESIDENT EGAN: That would be the ruling of the Chair. Mr. Davis.

DAVIS: Mr. President, I voted "no" on adopting the Riley amendment but I am sure there are people who voted "yes" for that amendment who would not have voted "yes" if the language "either by a two-thirds vote in each house of the legislature" had remained in. I am sure there are people who voted for that who would not have voted for it.

PRESIDENT EGAN: Mr. Davis, I think the question that Mrs. Nordale has raised is a valid one. Now have we done something here that a reconsideration cannot reach? Only by rescinding the entire action could we accomplish what Mr. Metcalf is attempting to do and the Chair was wrong in allowing a motion of reconsideration on that amendment after we had actually adopted the section. The Chair was not really thinking, the Chair will admit that. Mrs. Hermann.

HERMANN: I move that our action in regard to the reconsideration be expunged from the record.

PRESIDENT EGAN: Mrs. Hermann moves that the action with relation to the motion of Mr. Metcalf's move for reconsideration be expunged from the record.

HELLENTHAL: Point of order, Mr. President.

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

HELLENTHAL: I know of no rule that permits expunging anything from our record, no matter how desirable or undesirable, and when I speak of rules, I mean the rules of this body which said that a complete record should be made of all plenary sessions and I think it is out of order and not only out of order, I think it is an undesirable practice.

PRESIDENT EGAN: Mr. Hellenthal, under that rule you might have a good point of order. If there is no objection the Convention will stand at recess for one or two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chair has already stated that the Chair was in error and apologizes to Mr. Metcalf for not catching it sooner, in allowing the reconsideration at that time. It would have to have been done by rescinding; but as to a motion to expunge, a majority vote of the members can do it. If our rules are such that the body wishes to expunge something they could do it by a two-thirds majority vote of the Convention but there has been no second to any motion to expunge. The motion that Mr. Metcalf could use if he so chooses to pursue this matter would be asking that we rescind our action in actually adopting Section 8. It would take 28 votes to rescind the action on that particular action. Mr. Metcalf.

METCALF: Mr. President, I so ask that.

PRESIDENT EGAN: Mr. Metcalf, you move that the Convention rescind its action in adopting the proposed amendment to Section 8 as offered by Mr. Riley. Is there a second to the motion?

SUNDBORG: I'll second the motion.

PRESIDENT EGAN: Mr. Sundborg seconds the motion.

UNIDENTIFIED DELEGATE: Is the motion to rescind debatable?

PRESIDENT EGAN: The motion to rescind is debatable.

SUNDBORG: I would like to ask Mr. Metcalf a question. Is it your purpose in offering this motion that you want to get at the language in Section 8 and change it, if we do rescind our action?

METCALF: Mr. Sundborg, I liked the original Section 8 this afternoon much better. In fact I think it would be easier to get ratification next April. If you want my honest opinion

about it I liked the Section 8. There isn't too much language and there isn't too little. It leaves it pretty much up to the legislature and I like Section 8 as it reads in the original proposal.

SUNDBORG: Thank you.

UNIDENTIFIED DELEGATE: Question.

PRESIDENT EGAN: The question is, "Shall the Convention rescind the action it took when it adopted the amendment as offered by Mr. Riley?" The Chief Clerk will call the roll.

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

Yeas: 14 - Barr, Cooper, Hellenthal, Johnson, Kilcher, Knight, Laws, McCutcheon, McNealy, McNees, Metcalf, Robertson, Wien, Mr. President.

Nays: 37 - Awes, Boswell, Buckalew, Coghill, Collins, Cross, Davis, Doogan, Emberg, V. Fischer, Gray, Harris, Hermann, Hinckel, Hurley, King, Lee, Londborg, McLaughlin, Marston, Nerland, Nolan, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Rosswog, Smith, Stewart, Sundborg, Sweeney, Taylor, Walsh, White.

Absent: 4 - Armstrong, H. Fischer, Hilscher, VanderLeest.)

CHIEF CLERK: 14 yeas, 37 nays, and 4 absent.

PRESIDENT EGAN: So the "nays" have it and the proposed motion has failed of passage. Mr. Johnson.

JOHNSON: Mr. President, I move that we stand at recess until 7:00 o'clock this evening.

PRESIDENT EGAN: Are there committee announcements to be made at this time?

SUNDBORG: Mr. President, I move that Committee Proposal No. 9 be referred to the Committee on Engrossment and Enrollment.

HELLENTHAL: I'll second the motion.

PRESIDENT EGAN: It isn't necessary, but Mr. Sundborg moves, seconded by Mr. Hellenthal that the Committee Proposal No. 9 be referred to the Committee on Engrossment and Enrollment.

V. FISCHER: Point of order, Mr. President.

PRESIDENT EGAN: Your point of order.

V. FISCHER: You called for additional amendments for this particular article. There were no additional amendments, the Chair can refer that without a motion.

PRESIDENT EGAN: That is right, if the body wishes.

SUNDBORG: But it had not been referred, had it, Mr. President?

PRESIDENT EGAN: It has not been referred.

SUNDBORG: And it could not have been referred at this session if we had adjourned at that point?

PRESIDENT EGAN: If we had actually adjourned but we hadn't. If there is no objection the proposal, Committee Proposal No. 9 is referred to Engrossment and Enrollment.

SUNDBORG: I'll withdraw my motion.

PRESIDENT EGAN: Are there committee announcements? Mr. Rosswog.

ROSSWOG: Local Government, immediately upon recess.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, the Committee on Style and Drafting will meet at 6:30 at the rear of the gallery.

PRESIDENT EGAN: Mr. Nerland.

NERLAND: Mr. President, the Committee on Finance will not meet again.

PRESIDENT EGAN: The Committee on Finance is not going to meet. If there are no other committee announcements the Convention stands at recess until 7:30 p.m.

RECESS

PRESIDENT EGAN: The Convention will come to order. The Chief Clerk may proceed with the second reading of Committee Proposal No. 8/a.

(Committee Proposal No. 8/a was read for the second time.)

PRESIDENT EGAN: Does the Chairman of the Committee wish to explain the article at this time? Mr. Smith.

SMITH: Mr. President, first I would like to apologize for the Chairman and the Secretary, and other members of the Committee for being a few minutes late; and I would like to assure you that it was not through reluctance to face the ordeal. I would

like to call your attention first to the letter of transmittal accompanying the article, which refers to various delegate proposals, and I think that the letter is self-explanatory. I would like to emphasize two paragraphs, the one at the bottom of the first page of the letter, beginning at the bottom of the first page, which refers to a resolution or some other form of proposition to the Territorial legislature asking that a comprehensive study of necessary legislation in the resources field to implement this article be undertaken at the earliest possible time. The second is the delegate proposal which dealt with the fish trap question. Again, in conferring with the proposer of that proposal, I think that it will be satisfactory to refer that to the Committee on Resolutions, or to handle it as a resolution or as an ordinance. That, of course, can be taken up later. The first thing that I would like to say in regards to this article is the fact that in no state constitution will you find an article as comprehensive as this proposed article. For this reason I am sure that I can say, on behalf of the Committee, that we ask that each of you give this proposed article the closest possible scrutiny. We know that this article is not perfect. We have had a tremendous amount of help. We've had help from officials in both the Territorial and the federal government within the Territory. We have submitted it as widely as possible, and insofar as substantive changes are concerned, I don't think that we have had any recommendation, with one possible exception, which has not been met. Now, I, as Chairman of this Committee, I am sure, am in a more favorable position than has been any other committee chairman. This Committee has had as its Secretary a very able attorney in Mr. Riley; it has three competent and experienced mining men in Mr. Stewart and Mr. Boswell and Mr. Reader. Mr. King has had wide experience in the game, fish, and wildlife field; Mr. Emberg and myself have been commercial fishermen for a good many years; and Mr. White and Mrs. Wien have represented the public viewpoint. My reason for making this statement is that I intend to take full advantage of their capabilities. In explaining this article, due to the fact that so many of the questions which will be asked are of a technical nature, I am going to ask Mr. Riley, the Secretary of the Committee, to take over the explanation of the article.

PRESIDENT EGAN: Mr. Riley.

RILEY: Mr. President, in the last day or so, since the revised article was distributed, the Committee has heard from very few of the members as to proposed amendments. We will have a sheet of amendments coming out shortly, and as Mr. Nerland did yesterday, I would like to say that the Committee concurred in all of these. Some of them are merely typographical errors -- others go beyond that. We would like to have them accepted as a portion of the article as submitted by the Committee. We'd like to have these changes incorporated in the article at this point. I'll ask unanimous consent. I won't ask for immediate action

on that until the members have had a chance to have a look at them. I believe it is the Chairman's thought that we start with the statement of purpose and go right through the article. A few of the articles haven't anything in the nature of a preamble because we are operating somewhat on uncharted seas here. We thought it desirable to include in the outset a statement of purpose, and we feel that shows the Committee's basic thinking; the doctrine of putting all of our resources, both to maximum use while, at the same time, safeguarding the public interest in the avoidance of waste. The second paragraph, which is Section 1, simply repeats the enabling bills and boundary coverage. That's the identical language contained in House Measure 2535. Section 2 indicates the state's proprietary interest, which shall provide for utilization, conservation and development of all of the resources. Now, it was proposed to the Committee by, I believe, Delegate Hurley, yesterday, that our recital of various acts in this language in accordance with provisions and applicable acts of Congress, including the act admitting Alaska to the union, might be redundant, and I'll go along with that. It probably is, but I think it calls attention at once to the Congress that our proposal is subject to the very act which to the Congress is of prime importance as concerns Alaska statehood. I think that it might have some merit, even though redundant, for that reason. Section 3 states that replenishable resources shall be administered on the sustained yield principle. I won't go into that in detail here, beyond saying that, in our reference to sustained yield, we have in mind no narrow definition of "sustained yield," as is used, for example, in forestry, but the broad premise that insofar as possible a principle of sustained yield shall be used with respect to administration of those resources which are susceptible of sustained yield, and where it is desirable. For example, predators would not be maintained on a sustained yield basis. Section 4 merely states the general reservation of fish, wildlife, and the waters. Section 5 is the controversial section which Mr. Smith referred to when he stated that with few exceptions the Committee has gone along with recommendations which have come to it from outside the Committee proper. The members will all recall that we have been advised of the wishes of many in the Territorial Sportsmen Association and the local chapters of that organization. It was the consensus, not unanimous, of the Committee, that the language set forth in Section 5 go into the committee proposal. I'm sure that when we come to that, later, further comment will be made. Section 6 might be a little obscure. Its purpose is to authorize the state to provide those aids and facilities which might assure the fuller utilization of resources, such aids as roads, for example, to undeveloped areas; the provision of soil studies in agricultural areas should the Territory in its administrative structure have such talent at hand to go out in the field and assist settlers in testing their ground for particular agricultural capacity; forest management, advice from any forestry agencies which might be sought from the owners

of wood lots or timber stands, and various related aids. In other words, they aren't prevented. We don't know what the legislature will provide, but it is enabled, in this language, to enter such areas should that be its wish. Section 7 is a general declaration that all laws and regulations shall have uniform application as concerns the use and disposition of natural resources. This language, it has been held by some, is awkward, but it happens to be, almost verbatim, the language of an opinion in a Washington State Supreme Court case of 15 or 20 years ago, which has been cited and approved many times since. We feel that it has over-all application to the resource field. Section 8 reflects some delegate proposals whereby particular areas or sites or objects may be set aside apart from the disposable public domain for their historic, recreational, or cultural interest to the people. Section 9 goes on to define the state public domain as lands, interests, including submerged tidal lands, possessed or acquired. The thought behind "possessed or acquired" is to include both the prospective acquisitions and those held on attainment of statehood. That section also gives general authority to the legislature for the selection and administration of land in the state public domain. And, with respect to selection, of course, we face the immediate great problem before the state in the selection of some hundred million acres of land, which will be an enormous task and awareness of which has been a very real part of the problem in writing the resource article. Section 10 gives general leasing authority and states some qualifications. And Section 11 has the same coverage as to sales or grants. Section 12, by contrast with many state constitutions, gives very brief mention of the fact that the legislature shall establish appropriate safeguards of the public interest in measures it takes for the disposition of natural resources. Section 13 recognizes the reservation stated in the last several enabling bills, recognizes the thinking of Congress in those enabling bills. It assumes that the Congressional thinking will probably continue, but it leaves the door open in the event that Congressional thinking should change. Insofar as possible, we have sought to establish arrangements whereby prospectors and miners might be on familiar ground in dealing with the state in making their mineral entries, and in holding their ground and operating it. We've adopted, insofar as possible, the same language, limited to the extent we felt necessary to observe the reservation imposed by the Congress, or which we feel probably will be imposed by the Congress. At the same time we have, I feel, left ample escape provision in the event of a change in conventional thinking. In speaking of setting up a system of mining disposition or mineral disposition parallel to the federal, with which we're all familiar, I refer both to the metallic and nonmetallic minerals, and to the staking of the metallic minerals and the leasing of the others. Section 14 is concerned solely with water rights. The Committee has felt that the appropriation doctrine was the proper one for Alaska. We're familiar with it up to now; it has been the one adopted in most, if not all, of

the Western states. Section 15 provides access to navigable or public waters of the state to all citizens of the United States or residents of Alaska. Section 16 is the provision whereby there shall be no exclusive right or special privilege of fisheries. Sections 17 and 18, I should say, are related, and have to do with eminent domain. In the one instance, Section 18 provides access to resources for their extraction, removal; Section 17, eminent domain as concerns use of waters or interests in lands, or improvements affecting either. The beneficial use concept is pointed up in Section 17. In the Committee thinking it is contemplated that legislatively or by legislative delegation a schedule of beneficial use will be established whereby there will be superior beneficial uses and inferior beneficial uses on down the scale. Section 19 is simply a statement of residual powers, a statement that the powers specifically set forth herein are not positive limitations. While I'm on my feet, Mr. President, I see that the correction sheet has been handed out. I'd like to run down those just for a moment. Page 1, line 8, is simply a matter of typing transposition in the word, "Alaska"; page 3, line 21, strike comma after "use" and insert "and"; the following line, a period after "conditions", striking the balance of the line; page 3, the last word substitute a colon for a semicolon; page 4, line 16, at the end of the line add the words, "force during". Now, as to line 18, we had considered a suggestion of another delegate, presumably, I believe, based on 1955 legislation, but we have stricken that from our correction sheet, and I shall try to speak during the first recess to the delegate who proposed it, because we're not offering it as a committee correction. On line 21, after the word "permits", the Committee asked that the words "and transferable" be inserted just prior to "licenses". On the same page, line 18, the first word will be changed from "to" to "in". We discovered the other evening that "sulphur" is spelled s-u-l-f-u-r, the preferred spelling in the latest dictionary, and we're changing that spelling on line 8 of page 5. And, on line 5 of the same page, the second word will be changed from "and" to "or".

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, on line 3, "uses" for "use".

RILEY: Was that on our correction sheet, Mr. Kilcher?

KILCHER: No.

RILEY: You suggest that? I wouldn't object to that.

PRESIDENT EGAN: Will you accept that as part of your amendments Mr. Riley?

RILEY: Yes, I will, Mr. President. On the other hand, I will ask that the Committee corrections as suggested be adopted as

a part of the proposal submitted.

PRESIDENT EGAN: Mr. Riley asked unanimous consent that the Committee changes, as read, be adopted as a part of the original Committee Proposal No. 8/a. Is there objection?

TAYLOR: I object.

EGAN: Objection is heard. Do you so move, Mr. Riley?

RILEY: I so move.

PRESIDENT EGAN: Is there a second?

STEWART: I second the motion.

PRESIDENT EGAN: Mr. Stewart seconds the motion. Mr. Taylor.

TAYLOR: Mr. President, I was intrigued by the Committee's spelling of sulfur, s-u-l-f-u-r. S-u-l-p-h-u-r is the preferred spelling, and sulfur is used by some American chemists for sulphur and its derivatives.

MCCUTCHEON: Point of order, Mr. President.

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

MCCUTCHEON: I believe the matter of the spelling of a word is a matter for the Style and Drafting Committee.

PRESIDENT EGAN: It could well be a matter for the Style and Drafting. Mr. Stewart.

STEWART: May I reply to Mr. Taylor?

PRESIDENT EGAN: You may reply to Mr. Taylor.

STEWART: I have a new dictionary, a Webster-Merriam that was just given to me the other day and it gives "sulfur" first. It is the same text as this one but a much later edition.

PRESIDENT EGAN: Mr. Riley, did you have anything else, then, that was to come before the Convention, with relation to the suggestion made by Mr. Kilcher? Do you ask that that be held until after the recess?

RILEY: Yes, Mr. President.

PRESIDENT EGAN: The Chair would like to ask at this time, is it the wish of the Committee now that you have a recess at this time, as the rules might seem to call for, or should we go on and have a question period? Mr. Sundborg.

2455

SUNDBORG: May I ask whether Mr. Taylor withdraws his objection?

TAYLOR: Yes. I withdraw my objection.

SUNDBORG: Then we have now adopted the Committee's changes?

PRESIDENT EGAN: No, not as yet. The Chair hasn't --

R. RIVERS: I ask unanimous consent.

PRESIDENT EGAN: Unanimous consent has been asked. Has the objection been removed?

TAYLOR: I withdraw it.

PRESIDENT EGAN: If there is no objection the amendments as proposed by the Committee are ordered adopted as part of Committee Proposal No. 8/a. Mr. Smith.

SMITH: Mr. President, I would like to ask if anyone has amendments they would like to present to the Committee. If they have, then I would think it would be advisable to ask for a recess, and to discuss the amendments with anyone who has amendments prepared.

PRESIDENT EGAN: At this point are there any amendments that the delegates wish to submit to the committee? Is there any delegate who at this time has a proposed amendment he would like to speak to the Committee about? If not, Mr. Smith, evidently there are no actual amendments.

SMITH: Mr. President, then I would suggest that we proceed with the questions.

PRESIDENT EGAN: Mr. Ralph Rivers, did you say you had a question?

R. RIVERS: Yes, Mr. President.

PRESIDENT EGAN: Mr. Rivers.

R. RIVERS: Mr. Smith, I refer to Section 6 on page 2 and ask --

MCLAUGHLIN: Excuse me, Mr. Rivers, but, would it not be more advisable to proceed section by section by section to ask the questions, so that we have some system, tonight?

PRESIDENT EGAN: It would be, if that is the wish of the Committee, we will proceed in that manner. Does anyone have a question with relation to Section 1? Mrs. Hermann.

HERMANN: Mr. President, not a question in relation to Section 1, I just want to inquire if all these references to different

committees that are included on the message to the President have been made to the proper committees.

PRESIDENT EGAN: Mr. Smith.

SMITH: I'm not sure that I understood. It's only through this letter, Mrs. Hermann.

HERMANN: Then, Mr. President, I have a point of information. By just what method are they referred to other committees when they come in on reports like this? I'm a little bit concerned that something may be left out that properly belongs in the Convention. It is awfully hard to detect it if it never occurs. But, I would just like to know what procedure has been set up for reference to other committees when reports like this come in suggesting that they be referred to other committees.

PRESIDENT EGAN: Of course, up to now, unless the committee had come back with a specific request for referring it to another committee, why, we have just taken for granted that each delegate, having had a copy of these statements of proposed referrals, has perused them and taken them under the proper committee's consideration. Mr. Victor Rivers.

V. RIVERS: In the Executive Committee, Mr. Chairman, we elected to report them back to the Secretary with our recommendations for proper filing or for recommendation to other committees, and so did.

PRESIDENT EGAN: That is correct. The Chair recalls that.

SMITH: Mr. President, I have a recollection in which I might be wrong, that it was decided that reference could be made where necessary, by committee chairmen to the various committees. I don't recall in any of these references to delegate proposals, other than one where reference to other committees was necessary, but I certainly will check, and if there has been an omission, I will correct that omission.

PRESIDENT EGAN: Are there questions with relation to Section 1? If not, are there questions relative to Section 2? Are there any questions on Section 3? Mr. Peratrovich.

PERATROVICH: I asked the question before, but before we took a recess, and I'm a little bit concerned on this sustained yield program as far as fisheries are concerned. Did the Committee go into detail on it as to how that would apply?

PRESIDENT EGAN: Mr. Smith.

SMITH: Mr. President, yes, the Committee discussed that very thoroughly, and as Mr. Riley pointed out, this term "sustained

yield principle" was not intended to apply in the strict sense in which it does apply in the management of forestry land. The Committee realized full well that it would be impossible to determine the exact sustained yield in the fisheries; but the Committee felt that there was a definite indication that would be of value that, insofar as possible, the fisheries should be maintained on the sustained yield principle.

PRESIDENT EGAN: Mr. Peratrovich.

PERATROVICH: Mr. Chairman, then it is the opinion of your Committee, sustained yield basic program will be left, as far as fisheries are concerned, to the state legislature? Am I correct in that?

RILEY: I would say yes, Mr. Peratrovich, and probably by the legislature delegated to the fisheries agency. In the course of our work on this article, we felt obliged to assemble a glossary insofar as possible; and, I might read what we have agreed on amongst ourselves as the meaning of the term employed in the article. "As to forests, timber volumes, rate of growth, and acreage of timber type can be determined with some degree of accuracy. For fish, for wildlife, and for some other replenishable resources, such as huckleberries, as an example, it is difficult or even impossible to measure accurately the factors by which a calculated sustained yield will be determined. Yet, the term 'sustained yield principle' is used in connection with the management of such resources. When so used in this article, it denotes conscious application insofar as practicable, of principles of management intended to sustain the yield of the resource being managed."

PERATROVICH: Well, that answers my question. I just wanted to know how much consideration goes into that section.

PRESIDENT EGAN: Are there questions relating to Section 4? Mr. Sundborg.

SUNDBORG: If I may go back for a moment, the statement of purpose on page 1, line 6, where the Committee uses the phrase, "all peoples". Ordinarily, that, I think, would be meant to mean all the various races and nations of peoples of the earth. Is that what you mean?

PRESIDENT EGAN: Mr. Riley.

RILEY: Recognizing that preambles are sometimes couched in flowery language, we had in mind that all comers to Alaska were welcome. Does that answer your question, Mr. Sundborg?

SUNDBORG: I guess it does. You really do mean all peoples? You don't mean all citizens or all residents?

RILEY: Citizenship is not necessary now to participate in some of our resources.

SUNDBORG: What would you think of Style and Drafting dropping the word "peoples" entirely, and just extend to all the opportunity..."

RILEY: I don't think that would make it any more vague than it is now. (Laughter)

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: That somewhat contradicts, though, an equally basic statement contained in Section 15.

PRESIDENT EGAN: Mr. Riley.

RILEY: I agree, Mr. Hellenthal, it does. We had in mind in that recitation of resident Alaskans, or citizens of the United States. The fact there had been hostile aggressors here coming by sea in the past, if it's possible to reconcile those two --

HELLENTHAL: "Persons" might be the way to do it.

PRESIDENT EGAN: It is an easy matter that Style and Drafting could handle. Are there any questions relating to Section 4? Mr. Poulsen.

POULSEN: Section 4, for example, if you have a farm, and have a lake on the farm, and you should stock that lake with fish, would the public be allowed to go in there and fish?

PRESIDENT EGAN: Mr. Riley.

RILEY: It would be my impression that if you stock your own lake for the purpose of providing yourself and your neighbors or friends, or even the public, at a price -- the privilege of fishing in an extensive fish culture area, that those fish are not in a natural state. You have built up the fish population of that area with the particular purpose of marketing them. As a matter of fact, if clear ownership is established, and this is easier to illustrate if you have a pond, we'll say, the boundaries of which have been in some measure determined by you, if you have constructed and built a pond, certainly those fish are not in a natural state, and there is an exclusive right of fishery for you and your invitees. The problem is where it is a natural lake.

POULSEN: For example, if I have a homestead, and it is 160 acres; 80 acres of that is a lake. Would that be private, as long as it is within the boundary lines of the homestead?

RILEY: I would say, perhaps not.

POULSEN: That is the way I interpret your commentary.

RILEY: That has been a real obstacle all the way. I've done, more or less research on this and I'm not satisfied yet that any general and sweeping answers are possible.

PRESIDENT EGAN: Mr. Buckalew.

RILEY: I would like to pursue this just a moment, if I may, as soon as I find my reference here.

PRESIDENT EGAN: Mr. Riley, you are still attempting to find the answer to Mr. Poulsen's question?

RILEY: Yes, he referred to a homestead and we have some coverage to the effect that the United States will not convey lakes as he describes. Rather than hold up the Convention, perhaps Mr. Poulsen and I can get together afterwards on that point, if that's agreeable.

POULSEN: Yes, that's agreeable.

PRESIDENT EGAN: That's contained in Section 4 of the general reservations, Mr. Riley. It says the ownership of water is generally recognized as vesting in the state. Private rights can be acquired only to the use of the water. Mr. Buckalew.

BUCKALEW: Mr. Riley, I understand from your answer to Mr. Poulsen that Section 4, in the situation that he gave, would authorize a trespass by the public. That isn't what you meant, is it?

RILEY: We have a reservation procedure established and accepted whereby access shall be available.

POULSEN: The reason I'm so interested, Mr. Riley, is that I have such a farm.

BUCKALEW: I do too.

RILEY: I missed that, Mr. Poulsen. I'm sorry.

PRESIDENT EGAN: If there's no objection, the Convention will be recessed for one or two minutes.

RECESS

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

RILEY: Returning to Mr. Poulsen's question, the only parallel I can give immediately, this is taken from Surveying of Boundaries -- a very recent volume -- with voluminous footnotes of cases. "The Interior Department cannot grant title

to private parties of land covered by a navigable lake and such patent to that extent would be void." The Interior Department has administratively set up, I believe, 40 acres as the minimum area of a lake, which it would meander. The use of waters can be granted, but the ownership cannot be.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I think, for the record, we should make an additional statement. As I understood Mr. Poulsen's question, he said that, suppose he had a natural lake in the middle of his homestead, could anybody enter his homestead to fish. Your answer was, "Yes". My question was, does Section 4 then authorize a trespass on somebody that holds a fee title?

RILEY: No, I didn't intend to say that trespass would be authorized.

BUCKALEW: That's what I added.

RILEY: On page 4, top of the page, it reads, "All sales or grants of State land or interests therein shall contain such reservations to the State of all mineral or water resources as are required by the Congress, or the State, and shall provide for access thereto, and to all other resources reserved to the people; except..." and here we get into the legislative field, "that the reservation of access shall not impair the owners' beneficial use, prevent the control of trespass, nor preclude compensation for damage." Now, how those will all be assured is conjectural at this point. But I'm confident that the state agency charged with transfer of these lands from the state to the private individual will have to write in such reservation in all of its deeds, and will have to establish by means similar to those that the federal government has adopted in issuing patents; that at certain places, if need ever arises where the owner's use will not be impaired, rights-of-way may be had across. It is relatively complex, I grant you, to make a generalization as to how that access will be accomplished without impairment of use.

BUCKALEW: May I ask a question on Section 11 while I've got the floor?

PRESIDENT EGAN: We're going down, section by section, Mr. Buckalew. Mr. Hellenthal.

HELLENTHAL: I have a question along the same line that I think might clarify it. Did the Committee intend, in the case of a pond surrounded by private property in single ownership, to prevent the owner from exercising exclusive control over that pond?

RILEY: I will say, in reply, Mr. Hellenthal, that that very

question is one which has been constantly before the Committee, and positive solution has not been had. I think it accurate to say that the Committee unanimously endorses the view which your question suggests, that we felt that a pond, which I assume would be relatively small -- maybe the size of this room -- should be under the exclusive control of the owner of the surrounding land. But, I think that the state, were such language adopted in the constitution, would have to set up by administrative regulation standards such as the federal government has employed in the past whereby minimum area would be established. The federal government refers to --

HELLENTHAL: That's very well, but where in this provision have you provided that language which would permit the state to so do?

RILEY: I cannot guarantee that it is provided, beyond calling attention to the paragraph at the top of page 4, which says --

HELLENTHAL: Well, just a minute. Do you think that does it?

RILEY: I'm not confident that it does. No.

HELLENTHAL: Don't you feel that when you say in Section 4 that "waters, occurring in their natural state", that would be a pond -- "are reserved to the people for common use." You've achieved the opposite result from what the Committee intended?

RILEY: I don't know that you can find it possible to convey water. The use of waters can be conveyed.

HELLENTHAL: I think it would be impossible to convey water under Section 4 -- yes. A pond anyway.

RILEY: It is my belief, from my scant familiarity to date with the question, that this is no particular departure from existing situations.

PRESIDENT EGAN: Are there other questions? Mr. Lee.

LEE: Mr. Riley, in comparing Section 4 with your commentary on Section 4 I note that you classed fishing in private ponds or commercial fur raising -- you compare them to registered trap lines if authorized by law. It seems like the thought of having registered trap lines authorized by law would be in conflict with the term "common use". It seems like it's kind of dangerous to have in a commentary.

RILEY: Well, as I'm sure we all recall, the proposal for registration of trap lines has been made time and again in the past. Should registered trap lines ever be authorized in the state, I think it would be a parallel situation to the exclusive right of fishery you would have in an artificial pond which you

stocked and made available to all invitees at 50 cents a fish.

LEE: I see. You wouldn't intend that it would be a public domain -- that registered trap line?

RILEY: I don't know where else it would be. I have never advocated it, but it has been advocated in the past, and this language is proposed by a committee member, just against the chance that such registration of trap lines should ever be authorized. "If" is the key word there, I would say.

LEE: Yes. Well, it seems -- I've done some trapping, and from the country that I'm familiar with, if anybody had an exclusive trap line in that area, why it would be a very exclusive right of your natural resources.

RILEY: Exactly. You are acquainted with the arguments pro and con, that have accompanied every proposal of a registered trap line, I'm sure.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Riley, it is my understanding that by your Section 4 you did not intend to deprive anyone of property rights, presently existing property rights, such as Mr. Poulsen would have in his lake in violation of the Fourteenth Amendment -- this would affect only public property, which is subject to appropriation or already vested in the State of Alaska, is that not right?

RILEY: I hope that is right, Mr. McLaughlin.

MCLAUGHLIN: But it is your intent that the Committee will appreciate that it can't deprive people of their presently existing property rights?

RILEY: Yes.

MCLAUGHLIN: That's clear, and the only reason why you say in "their natural states," I presume, that is ferae naturae of the common law?

RILEY: Yes.

PRESIDENT EGAN: Are there other questions relating to Section 4? Mr. Gray.

GRAY: As long as the subject is up, I don't believe it is possible under your constitution to have registered trap lines. Is that a definite statement from your Committee, that it is impossible to have registered trap lines under your proposal?

RILEY: Well, under the general reservations of fish, game and

wildlife, and so on, I would say that it would be arguable. It might be remote, if there were any possibility of registered trap lines. I might add that that suggestion was brought into the commentary last Sunday as an afterthought which seemed to parallel the artificial fish pond.

GRAY: I believe, like Mr. Lee here, that it would be absolutely impossible in certain sections of the country, only in isolated areas, because it would be in direct conflict with Section 7, which gives equally to all persons in a similar situation, equal use and disposal. As soon as you put in a registered trap line, what that does is keep other people out of that area. So as long as the reference came up to it, I would say Section 7, and if there wasn't anybody in that area you wouldn't need registered trap lines, but if you put registered trap lines in there, it's going to be in direct conflict with Section 7. I'd like that understood at this moment.

RILEY: It does. It should be understood that, to my knowledge, no member of the Committee advocates registered trap lines, not only the matter of the conflict you suggest, but I think we all agree that in certain areas it would mean civil war.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, I'm going to ask Mr. Riley a question. Is it not a fact that many of the advocates of registered trap lines do it for the purpose of preventing a breach of the peace?

RILEY: That may have been the experience in Canada. I understand --

TAYLOR: They have registered trap lines there. And, to illustrate, a man might go down -- puts up his headquarters; and then, maybe 10 miles away, he puts up another camp, and 10 miles, he goes back and forth. Well, if a man does not have that registered, sometimes he has to fight for the occupancy of his own cabin. That's happened right up here. I've known several matters that have been brought to my attention in my office for help because somebody would take over the cabins, because there was no way of registering. The cabin was on public domain, they'd just get there first and take it. I don't believe there'd be any doubt but what they could register trap lines.

RILEY: Well, actually, the matter of whether they should or should not is not in the contemplation of this article.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President. Mr. Riley, in order to make Section 4 less broad so that the state could limit the people in

their common use of wildlife, fish, and waters, could we not add to the section, after the word "use", such language as "under limitations prescribed by law" without hurting the intent of the Committee?

RILEY: My offhand response would be that that wouldn't do any particular violence to the section.

R. RIVERS: Very well.

PRESIDENT EGAN: Are there other questions relating to Section 4? Mr. Taylor.

TAYLOR: I'd like to ask Mr. Riley one more question. Mr. Riley, isn't that a fact that your Committee discussed this matter, and set them out in the way they did so that the legislature would implement the policies you've established in this article?

RILEY: Oh yes, we conceive that there will be considerable legislation essential to give this any meaning or application.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. Riley, could you conceive that the question of these small size lakes or ponds, which are very frequent in my part of the country, that if such a small lake or pond were included in a homestead and constituted part of the acreage of the homestead, that this particular body of water -- which a lot of homesteaders, by the way, are draining for purposes of farming -- that this particular lake included in the acreage -- accounted for in the acreage -- in other words, reducing the man's acreage for the purposes, couldn't that be considered private domain?

RILEY: Well, I think, in fact, Mr. Kilcher, that there is very little enforcement of the statement that the United States cannot grant titles to the underlying land, because the lake is there, and no one -- unless the lake is drained -- thinks in terms of the land below. As you look over any map put out by the Public Survey Office, it is my memory that a 40-acre piece of ground which may have an 18-acre lake on it is shown in land area, 22. Am I correct?

KILCHER: No, not to my knowledge, I think it's the other way around.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: In small bodies of water the lines of the surveys do not meander around small bodies, and oftentimes the small body can be included in the 40 acres, and still the acreage is actually shown. The larger bodies do meander, and the water is

deducted, but the question is here, the statement that Ralph Rivers brought up, I think would be good, that certain limitations as to sizes should be imposed in regard to what would be a minimum size in connection with water and other uses of this nature.

KILCHER: Also, the term "navigable water", Mr. Riley, I think navigation means to go from one place to the other, and if the lake is navigable, it could, maybe, float a battleship if it is no more than 200 yards long. But you wouldn't go from one place to other on your place. So the term "navigable" should probably be circumscribed too.

RILEY: If we start on "navigable" we won't adjourn on February 7, I assure you. (Laughter)

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Riley, one thing that did bother me -- I think it probably was a slip -- you don't contend that lack of enforcement amends the constitution?

RILEY: No, no. As a matter of practice, I simply suggested that any fine hair distinctions made as to what is conveyed are probably observed mostly in a breach.

PRESIDENT EGAN: Are there other questions with relation to Section 4? Mr. Buckalew.

BUCKALEW: Mr. Riley, maybe I misunderstood you, but you gave an example where a man created an artificial lake and sold coupons to fish for 50 cents, and you said that those people would be invitees. Did you mean licensees? I don't know whether it's important or not, it might be when you're discussing it with the rest of the section.

RILEY: We've seen in recent years where intensive cultivation of fish is had in an artificial pond, we'll say, simply a commercial operation to attract those interested in easy fishing. It was suggested that such a situation was either planned or existed in this immediate area, and the illustration was used only to show an instance of an exclusive right of fisheries. The artificial pond, the deliberate culture of the fish for particular commercial purpose took it out of the general language of the article.

BUCKALEW: I just had a different understanding of the word "invitee" than you had.

RILEY: Well, I think you're right, yes.

BUCKALEW: I just wondered if you were using that interpretation when you considered Section 4, as to what an "invitee" was as

compared to a "licensee".

RILEY: I'll settle for the "licensee".

PRESIDENT EGAN: Are there other questions with relation to Section 4? If not, are there questions relative to Section 5? Section 6? Mr. Ralph Rivers.

R. RIVERS: Mr. Riley, Section 6 speaks of utilization of lands, and development and utilization of fisheries, wildlife, and waters. Does the expression "utilization of lands" include forests? Did you leave out mention of forests on purpose?

RILEY: I would say that the term "land" in this usage would mean lands and the products of land.

R. RIVERS: I asked that for the record.

PRESIDENT EGAN: Are there other questions? Mr. Kilcher.

KILCHER: Mr. Riley, would you include under reclamation the drainage of swamps?

RILEY: Yes.

KILCHER: Drainage of shallow lakes?

RILEY: Yes.

PRESIDENT EGAN: Mr. Coghill.

COGHILL: Mr. Riley, wouldn't Section 6, in turn, just give the opposite answer to what you gave for Section 4, on trap lines?

RILEY: Well, frankly, I wish trap lines had never come into this discussion.

COGHILL: The reason why I brought the subject up is because the area I'm representing in this Convention, a big part of them are in that business, and I do know that, as you say, by bringing it up you will have more or less extended the civil war but I have known cases where the unregistered trap line has almost become civil war in that area. By your Section 6 you say the development of fisheries, wildlife, and waters -- on line 19 -- that would more or less take care of it where the state in turn could make some sort of a registration.

RILEY: Well, I don't know whether that would be development of wildlife, it would go to the utilization, perhaps, or the extraction.

COGHILL: Usually, a person in any one given area has been

going back there and trapping for many years, conducts a program of conservation of their own. Otherwise, their trap lines would be assumed diminished and that would probably be well brought under that.

RILEY: I'm rather confident that the matter of trap lines was not in the contemplation of any member of the Committee or any consultant when these two sections were drafted. It was an afterthought which hit the commentary.

COGHILL: I see it's in the commentary. So, it must have been brought up at some time.

RILEY: It was. Sunday last.

PRESIDENT EGAN: Are there other questions with relation to Section 6? Mr. Kilcher.

KILCHER: Mr. Riley, would you think that, under facilities, improvements, and services, there may be financial assistance or financial participation of the state?

RILEY: Conceivably there would be. Certainly, if you were to have an agronomist to come out to your homestead and take some soil capability tests for you, there would be indirect financial assistance. Roads would be a direct financial assistance to open up your area.

KILCHER: I'm more specifically thinking of reclamation and clearing of land, putting it in to agricultural use.

RILEY: I would say that this section would not prevent continuance of existing programs of that nature.

KILCHER: Thank you.

PRESIDENT EGAN: Are there other questions on Section 6? If not, are there questions with relation to Section 7? Mr. Hellenthal.

HELLENTHAL: Mr. President, isn't Section 7 pretty much a basic concept of law that need not be included in the constitution? It will be there whether you state it or not.

RILEY: Well, I should say that may be safe to rely on. That's simply based on the Fourteenth Amendment. The members of the Committee liked the language particularly for its application in the resource field, and the origin of that language from the resource field.

PRESIDENT EGAN: Are there other questions relating to Section 8? Mr. Johnson.

JOHNSON: Mr. President, may I direct a question to Mr. Riley on Section 8?

PRESIDENT EGAN: You may.

JOHNSON: Mr. Riley, in setting up Section 8, was it the intent of the Committee to cover such things as archaeological deposits which might be discovered, and might, for scientific purposes, want to be set aside for use by scientists for that purpose alone? Do you know whether or not, under the language of this section, that that could be done?

RILEY: When you say for use of scientists alone, Mr. Johnson, you mean that the particular items would be removed from their natural setting and transported elsewhere?

JOHNSON: No, what I had in mind was, for instance, Doctor Skarland goes around quite frequently throughout the Territory and explores for fossil deposits, and sometimes they find them, and frequently they might be equipped, it's conceivable that they could be found in large quantity, and it might be advisable under circumstances of that kind for the purpose of scientific study, to enable the person discovering to have it set aside under the auspices of the state and used until the study was complete, so as not to prevent any destruction or loss of the deposits.

RILEY: Well, that is a thought which I don't believe had occurred to any of the Committee before -- your thought of restricting traffic through the area might endanger the object.

JOHNSON: I noticed you used the term "scientific interest may be acquired" and I wondered if it were the intent of the Committee to cover the thought I mentioned by that language.

RILEY: With reference to the people's "use, enjoyment and welfare" which gives me my only hesitation there to say yes. Conceivably, if the scientists concerned could advance some reason why it would be in the interest of the people, generally, to follow that course, I would say it would fall in this section. It's a thought that hadn't occurred, as far as I know, to the Committee.

JOHNSON: Doctor Skarland spoke to me about it one time, and he mentioned that a number of states, and countries for that matter, have provisions of that sort for protecting archaeological deposits, and he thought it advisable that we have some such protection in our constitution and I just wondered if this would do it.

RILEY: I think it might be desirable to frame language to accomplish that purpose within this section.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: When you do, I might suggest that you read the National Archaeological Act, a federal act which treats this same subject and does not permit anyone to interfere with such objects.

PRESIDENT EGAN: Mr. Marston.

MARSTON: Mr. President, I happened to be about three years ago trying to get an old village turned over to the village of Unalakleet, and I ran into the antiquities law. And that antiquities law said you shall not do anything about it, but we can dig up the bones and the relics and take them away, but you can't have them. And, I said, "You're not digging them up, or anybody else. We're keeping them." So they agreed we'd leave them there. One village, the village of Unalakleet -- the antiquities law.

HELLENTHAL: It applies in every state.

RILEY: Well, I shall appreciate, and I know the Committee will, any assistance in this respect towards redrafting this particular section to arrive at that result.

PRESIDENT EGAN: Are there any other questions with relation to Section 8? Are there questions on Section 9? Mr. Fischer.

V. FISCHER: I would like to ask Mr. Riley exactly what the Committee means in line 7 by "lands and interests therein"? Does the interests therein refer to forests, minerals and other resources, as used by the Committee?

RILEY: This is a question Mr. Fischer and I have discussed a little bit today, and I think that he has an excellent point that so often we're thinking of a document, a leasehold or a deed or a patent or a partial interest in a mining claim. I feel that the Committee intent was to cover the resources therein, the mineral below the surface, forests above, and so on. And some improvement of language or clarification may be necessary at that point. As a matter of fact, "interests therein" has been used throughout the article. In some instances it might have a meaning in one sense, and in some the other, and I'm very much pleased that we have the talent we have in Style and Drafting.

PRESIDENT EGAN: Are there other questions on this section? If not, are there questions with relation to Section 10? With relation to Section 11? Section 12? Mr. Metcalf.

METCALF: Mr. Riley, on Section 12, I take it it's the meaning and intention of the Committee that before the state can lease or sell any land or interest they'll be publicly advertised

so the highest bidder may have the chance to get it, and not be handled the way it is now?

RILEY: That's the underlying thought. Some state constitutions spell all this administrative procedure out in detail. "The sale shall be at 10:00 a.m. on the courthouse steps after 30 days advertising..." and that sort of thing and we felt that to be a legislative concern, and we need only suggest it.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: I'm a little perturbed about the narrow definition that you seem to suggest would be implied to the word "interests". Do you mean to interpret it narrowly?

RILEY: I suggest, Mr. Hellenthal, that I thought that there were two possible interpretations.

HELLENTHAL: Which did the Committee intend?

RILEY: The Committee had in mind largely the surface of the land and everything it contained.

HELLENTHAL: Then, you intended the broad interpretation?

RILEY: I do.

HELLENTHAL: Well, then I certainly wouldn't leave it to Style and Drafting to superimpose their interpretation.

RILEY: As a matter of fact, I would like to quiet any fears on that score. I think Mr. Fischer and I are going to go through this and check each reference to "interests therein" and see if, perhaps, other language might be desirable.

HELLENTHAL: And be sure to bring it to the floor when you do.

RILEY: Oh, yes, before third reading.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: I tried to keep up reading, and I had a question for Section 11.

HELLENTHAL: Before --

KILCHER: I'd like to ask a question if I may.

PRESIDENT EGAN: Mr. Kilcher has the floor. You may ask your question Mr. Kilcher.

KILCHER: There is again, on line 5, the question of "access thereto", and line 9 the word "damage" is mentioned. Would you

consider it to be a case of damage when a man has built his private roads, and there is a question of public use to use them? I happen to be in such a position, personally. I am the owner of a private road that is not travelled, and the road is, of course, in rainy weather, abused by people who are not conversant with that type road. Would you consider this "damage"?

RILEY: Well, conceivably you've been damaged. I don't know the full circumstances, and I wouldn't undertake to say yes or no, but what we're trying to do here is to indicate to the legislature that provisions shall be made for the compensation of damage, where it's established. I hesitate to rock the boat further by getting into this subject. It has been so well expressed for the record by Mr. McLaughlin, and I would like to abide with that for the Committee.

KILCHER: Offhand, would you say that the establishing of toll bridges or toll roads would be excluded -- private ones -- would be excluded or included in this section?

RILEY: No, toll roads was never mentioned.

KILCHER: I mean, I'm asking you, offhand.

RILEY: Well, offhand, I'd have to think about it. I don't quite see the application.

KILCHER: Well, thank you.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: Mr. Chairman, just on behalf of the Committee, I suggest that the personal problems -- we have 14 attorneys in the Convention -- and they will all handle the matter.

KILCHER: Mr. Chairman, I hope the Convention understands that I am mentioning a personal problem because that's the one I am most conversant with, but they serve a general application, of course.

PRESIDENT EGAN: Are there any questions with relation to Sections 11 or 12? If not, are there questions on Section 13? Mr. Barr.

BARR: I have a few questions. Mr. Riley, on page 5, starting on line 10. You have a paragraph there dealing with "leases and prospecting permits giving exclusive right of exploration..." Now, in the first part of this proposal you say that all these resources shall be open to the general public, everyone treated alike, and also on prospecting and staking out mineral claims you say first come, first served. Now, why do you propose giving exclusive rights for exploration in this paragraph?

RILEY: Mr. Barr, in our mineral coverage in this article we have sought to be guided by the existing federal practice, in order to divulge to the people a system as familiar as possible to them. You will note in that paragraph that the substances, the minerals concerned are those which today are all disposable under lease from the federal government. This is simply an extension, or an adoption by the state of the existing federal practice.

BARR: Well. I can understand the word "leases" but "prospecting permits" sort of stops me. It sounds like no one can enter on any land for the purpose of prospecting, I mean, the original discovery, in other words.

TAYLOR: May I explain that?

RILEY: I refer you to Mr. Boswell.

PRESIDENT EGAN: Mr. Boswell.

BOSWELL: In the matter of prospecting permits, it probably applies to coal most forcibly. Under the federal Mineral Leasing Act you can get a permit to prospect for coal. Now, that permit is not nearly as expensive to get, nor as hard to maintain, as a lease is, and after a definite period of time, you can then either abandon your permit or you can take it ahead and get a lease. And that is why we have included this exclusive permit in connection with the coal, and these other leasing act minerals. Now, down at the bottom of the last line it says, "for the use of geophysical, geochemical and similar methods of prospecting for all minerals." Now, that is a rather new conception, and those are new methods. In order to use such a method, it is necessary to work over quite a large area of ground; and it is the intent of the Committee to interpret this narrowly so far as this last type of permit is concerned. In other words, we don't feel that many of these permits should be given, and they should be given to reliable parties, so that we don't have our land cluttered up with a lot of permits. You can have a situation where someone would ask for one of these permits and then, perhaps, through no fault of his own, not do anything about it and, of course, that would tie that land up for the time of the permit. So, as I say, we feel that this particular thing is a good thing, but it should be applied in a rather narrow way.

BARR: Well, the way I read it, then, if I want to take a scintillator out here in an airplane and prospect, I have to get a permit.

BOSWELL: No, I wouldn't say that type of prospecting would be included, there would be no permit necessary.

BARR: Of course, there are two types of prospecting. One, you

have no knowledge of any minerals in the area, and the other, you know there is some, but you have to dig a hole to find out how much. In other words, one involves labor and the other involves walking around quite a bit. You're speaking mainly of exploration by development when you're speaking of prospecting this way?

BOSWELL: Yes, that's right. Now you're talking of using a scintillator, that would be for a type of mineral that you would locate. It wouldn't be a type that you would get a lease on. We're talking, in this case, about these leasing act minerals, not the metallic minerals that you normally locate under the federal laws.

BARR: Well, I still don't understand some of it, but I'll get together with some of the Committee during recess and go over it a little more.

PRESIDENT EGAN: If there's no objection, the Convention will stand at recess for five minutes. The Convention is at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Are there other questions with relation to Section 13? Mr. Cooper.

COOPER: Mr. President, I have a question. In line 5, page 5, the word "or" that was inserted by the Committee. I want to know just exactly why the word "or" was inserted in lieu of "and", and, if possible, shouldn't it be "and/or"?

BOSWELL: I think Styling and Drafting will rule that out. The thought there was that we might have a situation where the extraction would be on one claim and the processing on an adjacent claim. And it seems like it would be a little broader to say "or" instead of "and". That's about the only answer I can give on that.

PRESIDENT EGAN: Mr. Cooper.

COOPER: Well, I had in mind, for instance, cinnabar, which is a rather costly extracting process. Now, eventually, according to this, the mineral claimant could extract on one claim, and the basic processing of said mineral could only be on another claim, is that right?

BOSWELL: I beg your pardon?

COOPER: The extraction or the excavation could be on one claim, but the processing could only be on another claim?

BOSWELL: No, that's not the intent. The extraction and basic

process, they could be on one claim, but, if we have "or" in there, then if you had an adjacent claim where you were not doing any extracting, you could still have basic processing on that claim, or you could use it for tailings or any other of these things that are necessary in the mining operation.

PRESIDENT EGAN: Are there other questions? Mr. Sundborg.

SUNDBORG: Mr. President, I have a question. Mr. Riley, why is it considered desirable, in Section 13 on page 4, lines 16 and 17, to refer to the federal mining laws enforced during the year 1955? It occurs to me that that might seem to be a rather strange date to enshrine in our constitution which may not go into effect for several years hence. It's already 1956.

RILEY: That has occurred to the Committee. We feel that we know what a federal mining law was in 1955. A cut-off date must be established by one means or another. Conceivably, between the time this constitution is adopted by the Convention and the time it goes in force, many changes might occur in the federal mining laws which we do not anticipate. I might say it's perhaps remote, because there have been notably few changes in the last 80 years, but in any event, the Committee felt that some certainty should be established as to what federal mining legislation we were speaking of. What was its condition, what were its terms at a given moment?

SUNDBORG: Doesn't the term "those minerals subject to location under the federal mining laws..." etc., isn't it exclusive of the "coal, oil, gas, oil shale, sodium, phosphate, potash, sulfur, pumice, and other minerals" mentioned in a later part of this section?

RILEY: Yes, generally speaking.

SUNDBORG: And you wouldn't mind -- in that regard, you say. "and other minerals as may be prescribed by law"?

RILEY: That's another question, if I'm not interrupting.

SUNDBORG: Go ahead.

RILEY: It was brought to our attention not long ago that, assume this had been adopted 15 years ago, assume that uranium, for example, took the important place it has since, and that no Atomic Energy Commission had been provided. Uranium would not have been in our contemplation. Possibly, various complications would have arisen. It may be those elements and those minerals which have no foreseeable commercial value today which may become very important in the future. And that's the occasion for the "such other minerals" language, on wherever it appears. It's touched on in the other group of minerals on page 5, lines 8 and 9, and line 18, page 4.

SUNDBORG: You wouldn't consider it safe to say, instead of 1955, as of the date of ratification?

RILEY: "Ratification", I think, would be safe because that, we hope, is just a period of a few months in the future.

PRESIDENT EGAN: Mr. McNees.

MCNEES: I have a question I'd like to address to Mr. Boswell, if I may.

PRESIDENT EGAN: You may ask your question, Mr. McNees.

MCNEES: There was no intent on the part of the Committee, was there, to make necessary the use of a permit? Something like a hunting and fishing license in the prospecting for minerals on the public domain, only insofar as they would want an exclusive right to prospect, is that correct?

BOSWELL: Absolutely correct.

PRESIDENT EGAN: Are there other questions? Mr. McNealy.

MCNEALY: I would like to address a question to Mr. Boswell.

PRESIDENT EGAN: You may ask a question, Mr. McNealy.

MCNEALY: It occurs to me that when the federal government makes a grant of some 100,000 acres in excess of land, that it will embrace a good number of mining and mineral claims that are presently being worked or being held. I wonder had the Committee given any study to whether or not it would be the intention of the federal government, in transferring these lands to the state, to reserve under the present miners or those working mineral claims, to reserve them their rights under the federal mining laws?

BOSWELL: The present enabling act is very specific about any ownership of land in the federal government will remain with the person who has it, even to a claim that is staked. Even if that claim has been staked, presumably it can be carried right on through the patent if it is staked before that land is taken over by the state, it can be carried through to patent under the federal government.

PRESIDENT EGAN: Are there other questions on Section 13? Mr. Buckalew.

BUCKALEW: Then I understand, Mr. Boswell, we don't have to cover that situation in the transitional measures.

BOSWELL: I don't believe so.

PRESIDENT EGAN: Are there other questions? Mr. Boswell.

BOSWELL: This is 2535, following the matter of selection of land, "Provided that nothing herein contained shall affect the continued validity of any such lease, permit, license or contract, or any rights arising thereunder."

PRESIDENT EGAN: Mr. Cooper.

COOPER: Mr. President, I have another question. I don't know which one of the Committee members would answer this. On a geochemical prospecting permit giving exclusive right of exploration, would that include an entire watershed or would it be more or less localized?

BOSWELL: Well, it probably would include quite a considerable area. That's one of the features of geochemical prospecting. They start at the lower part of a stream and work up, and when they find some indication in their geochemical work, they might go up a certain tributary. These permits, as I said, would be for limited periods; and I would also call attention to the language in line 11 -- these leases and prospecting permits may be authorized. It doesn't say that they "shall" be, or anything like that, it's just leaving the door open for the legislature to permit it if we should ever want it.

PRESIDENT EGAN: Are there other questions on Section 13? If not, are there questions with relation to Section 14? Mr. Hurley.

HURLEY: Mr. President, on line 21, Section 14 -- whoever wants to answer it -- it says that, "Priority of appropriation shall give prior right." Now, my understanding is that you're adopting, in a general way, the doctrine of beneficial use. Now, with a statement such as "priority of appropriation shall give prior right", would you still feel that that right would be subject to beneficial use of the waters?

RILEY: I would say the next sentence does carry that concept and that has been clearly in the minds of the Committee.

HURLEY: Mr. Riley, I did read the next sentence, and my interpretation of the next one had reference to the relative beneficial uses that might be determined, and not to the particular beneficial use of the water that had been established by the prior claim. "The priority of appropriation shall give prior right" language is again an effort to stay with familiar concepts in Alaska, just as we mentioned with respect to mining locations. As is well known, the notion of "first in time, first in right," has long been followed up here, but I think, too, that it's generally established that some beneficial use, if you will, must continue.

HURLEY: I'll call your attention, Mr. Riley, to page 8 of your commentary, the third line of which you say, "the preservation of a prior appropriation right to water requires continued beneficial use," which answers my question as far as your intent is concerned, but I wonder if the section itself is perfectly clear to that extent.

RILEY: Well, there is a long line of cases to the effect that the evidence of a valid appropriation of water is first, an attempt to apply it to a beneficial use, existing or contemplated, and an actual diversion and application of it to that particular use within a reasonable period of time.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. President. Mr. Riley, don't you think that the separate reference to fish and wildlife at the conclusion of Section 14 might be construed to take fish and wildlife out of the operation of the preferential system with regard to beneficial uses?

RILEY: Well, I hadn't thought of it in that way, Mr. Hellenthal, but since you raised the question, I assure you we will think of it.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: I'd like to ask Mr. Riley a question.

PRESIDENT EGAN: You may ask a question, Mr. Taylor.

TAYLOR: Mr. Riley, isn't it a fact that Section 14 is, more or less, a reiteration of the body of law that grew up through the utilization and appropriation of water in the Western states over -- in fact -- the last 100 years?

RILEY: Yes, I agree.

TAYLOR: And that the last sentence as to fish and wildlife, that you cannot contaminate the waters such as to kill off the fish or ducks or any other wild animal?

RILEY: Right. That was our thinking. We'd set up a general reservation earlier and felt obliged to call attention to it.

TAYLOR: When you use the words "a long line of cases", that is the cases of the Western states?

RILEY: The Western states, yes.

TAYLOR: Innumerable cases in which they define the rights of appropriation of water and the beneficial use of it, and the continued use.

2478

PRESIDENT EGAN: Are there other questions on Section 14? If not, are there questions on Section 15? Mr. Gray.

GRAY: I'd like to ask here, Mr. Riley, in Section 15 why do you employ the use of navigable waters when they're expressly under federal jurisdiction?

RILEY: Well, I'm not sure that I can field that one, Mr. Gray.

PRESIDENT EGAN: Mr. McLaughlin.

MCLAUGHLIN: If you don't mind my volunteering -- what might be navigable under state law might not be navigable under the Federal Constitution. And what might be nonnavigable would still be public waters of the state. There isn't a distinction between navigability of state waters and navigability of waters under the Federal Constitution.

PRESIDENT EGAN: Are there any other questions relating to Section 15? Section 16? Mr. Sundborg.

SUNDBORG: Mr. Riley, in your opinion, does Section 16 prohibit the operation of fish traps without any further legislation by the state?

RILEY: I would say no.

SUNDBORG: Would it permit the abolition of fish traps by statute?

RILEY: I don't think that question necessarily arises in connection with this section. Perhaps you have read the last paragraph in our letter of transmittal.

SUNDBORG: I have.

RILEY: The White Act specifically forbids the exclusive right of fisheries, and yet has never been the means for abolition of fish traps. That, perhaps, is a very superficial answer.

SUNDBORG: Is there anything in the constitution, as we have considered it here in second reading, which in your opinion would prohibit the abolition of fish traps?

RILEY: No, I think not once the constitution is in force.

SUNDBORG: You believe that the state does have the authority to abolish it?

RILEY: I do, or it will have.

PRESIDENT EGAN: Mr. Poulsen.

POULSEN: On this exclusive rights and special privilege, would

Bristol Bay where they have set netters, Cook Inlet set netters, on the Yukon where the Natives have special rights to catch salmon, and so forth, could they be stopped under this?

RILEY: I would like to refer that to Mr. Emberg, our specialist on that.

EMBERG: Mr. President, I don't know how much of a specialist I am, but I should say that we have had in effect since 1924 in Alaska a Federal act called the White Act, which says there shall be no several right or special privilege of fishery. That language has not operated to prohibit set nets with resident qualifications being operated in the Bristol Bay fisheries any more than it has operated to prohibit fish traps in other places, so I don't see how you can restrict it here.

POULSEN: Oh, I'm for it. Don't get me wrong.

PRESIDENT EGAN: Are there other questions relative to Section 16? Mr. Buckalew.

BUCKALEW: Mr. Emberg, we have a proposed ordinance which we've drawn, which simply states that there shall be no traps for the commercial taking of salmon. That ought to do it, wouldn't you think, Mr. Emberg?

EMBERG: Yes, if you would have said there will be no fixed gear operating, you would cover set nets, too, but you didn't; you specifically mention traps.

HELLENTHAL: Don't you think that this fixed set net should be excluded from the operations?

EMBERG: Well, certainly, I don't want them abolished by this constitution. I think they are a legal form of gear, and they are mostly fished by residents of Alaska, and I don't think it would be to the interest of the state or its people to provide for the abolishment of all forms of fixed gear.

HILSCHER: Mr. President, may I ask Mr. Riley a question? In this discussion just the last few minutes, I believe I understood you to say that you felt that the state had the authority to supervise or to abolish fish traps under this constitution.

RILEY: Yes, it will by statehood itself.

HILSCHER: Did you mean to indicate, then, that a specific ordinance would not be necessary in ordinances and transitions?

RILEY: When statehood is achieved, the state itself may act, with or without an ordinance, meanwhile.

HILSCHER: Thank you.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, may I ask Mr. Emberg a question?

PRESIDENT EGAN: You may, Mr. Kilcher.

KILCHER: Do you think, Mr. Emberg, if the words "no exclusive rights or special privilege" is interpreted right, that this section might make it mandatory that the state should abolish fish traps?

EMBERG: I think that inasmuch as they operate in the line of being an exclusive right or a special privilege that this common sense application, whether their legal definition doesn't cover that same sense, that this is a good indication that that type of fishing would be frowned upon under the constitution.

KILCHER: That it might be considered unconstitutional? Fish traps might be considered unconstitutional if this is going to be the constitutional language?

EMBERG: Not so far as I know under the doctrines of fishery rights, as I understand them that have been decided in the state supreme courts or in the federal courts. I wouldn't rely on this section to abolish fish traps. It would take a specific act of Congress, or of the state legislature, or a constitutional provision, or an ordinance. I want to say, too, for the record, that in regard to the questions about the authority of the state to abolish fish traps, it would also have the authority to abolish any presently legal form of gear, so this is not discriminatory.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. Riley, suppose that the present Secretary of the Interior, Douglas McKay, or whatever his name is, provides by an Act of Congress, that fish traps shall be abolished over a ten-year period, say, starting six months from now, do you think that would deprive the State of Alaska of their inherent power to abolish the traps?

RILEY: I confess that thought has occurred to me as to whether any such motivation might have prompted it. I feel, without having done any research on the subject, that when the state comes into being and sovereign rights may be exercised, that any administrative directive as to fish traps lasting five years or ten years, will have to give away to the decision of the state made known in its sovereign capacity. I don't profess to have looked into the subject at all, but I rather doubt that our sovereignty could be limited by that device or its full exercise. And certainly I think it is a subject which we might concern ourselves with.

PRESIDENT EGAN: Mr. Peratovich.

PERATROVICH: I want to ask Mr. Riley one question, if I may.

PRESIDENT EGAN: You may ask a question, Mr. Peratrovich.

PERATROVICH: Then it's the feeling of the Committee that perhaps it is best not to single out any type of gear in respect to the fisheries? There was a suggestion made, could it not be spelled out in the form of an ordinance, and I think Mr. Emberg spoke of that -- your explanation was against that, if I understood it correctly. Is it the feeling of the Committee that it's best to leave this particular subject out of the constitution, or ordinances?

RILEY: I reply in this manner -- the Committee feels that it's desirable that this Convention express itself on the subject of the abolition of fish traps as has every deliberative body in Alaska since 1913, every legislature, I should say. We do not feel that it should appropriately be a provision frozen into the constitution as such. We feel that that expression may be made effectively by ordinance, and it can be made by resolution, but that the Constitutional Convention should go on record in that respect. For one thing, if it were to be placed in the constitution, to be there forever, I think it would detract from the dignity of the document in appearing to be a matter of permanent record of economic sanctions.

PERATROVICH: I was satisfied with the explanation that you gave in your answer to someone here, that you felt, under our constitution that there be a possibility of our legislature taking that action. That's the reason I mentioned this question.

RILEY: When Doctor Gabrielson appeared in public hearings here, I think he echoed the feelings of many when he said he felt he knew what the number one act would be in the first state legislature, barring earlier action to abolish fish traps by this group.

PRESIDENT EGAN: Are there other questions in relation to the section? Mr. Sundborg?

SUNDBORG: Mr. Riley, if we can go back to the hypothetical case proposed here by Mr. Buckalew a moment ago, about the possible adoption by Congress of an act which would abolish fish traps over a period of years, can you see any possibility that Section 2 on page 1, where it states that the state shall provide for the conservation and so on, of resources "in accordance with provisions of applicable acts of Congress", might tie our hands, or tend to do so, if we should wish to abolish fish traps within the period which would be provided in that federal legislation?

PRESIDENT EGAN: Mr. Riley.

RILEY: There, too, Mr. Sundborg, that's a question which hadn't earlier occurred to us. I'm glad to see it out in the open. I think that we would do well to consider that language in terms of your question.

PRESIDENT EGAN: Mr. Hilscher.

HILSCHER: May I go back to the question that I asked Mr. Riley, and I thought I got one answer, but it turns out now that I have the opposite answer?

PRESIDENT EGAN: You may, Mr. Hilscher.

HILSCHER: It is my understanding, Mr. Riley, that when Alaska becomes a state, it has the sovereign right to decide what to do with fish traps.

RILEY: That has always been my understanding, Mr. Hilscher, until a moment ago when Mr. Sundborg raised what may be a substantial reason to re-examine both Section 2 and all present proposals of the federal government.

HILSCHER: Discounting --

RILEY: Apart from that, I would say that the answer to your question is yes, unqualifiedly.

HILSCHER: Well, thank you. Then, if the answer is yes, then why should we have a specific ordinance brought into the constitution which says fish traps shall be abolished by the State of Alaska?

RILEY: I'm saying simply as a policy matter, for myself alone, although I think it is shared by the Committee, that I believe this Convention should go on record with an expression of some sort on the subject of fish traps, because that is of such vital concern to all of Alaska.

HILSCHER: I would be inclined to think that we are just asking for trouble by so doing.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I can answer Mr. Hilscher's question. If we provided it by ordinance, fish traps would be illegal the day Alaska was admitted to the union, and we wouldn't have to wait for the legislature to act. We could knock them out perhaps six months earlier. That would be the advantage of having an ordinance.

RILEY: We are in agreement, the Committee, on that.

PRESIDENT EGAN: Mr. McNees.

MCNEES: Coming back to an answer here on this Section 2 on page 1, the acts of the Department of Interior are not necessarily an act of Congress.

RILEY: That isn't what Mr. Sundborg had in mind if I understood his question. He was assuming that there would be a Congressional measure adopted to abolish fish traps over a period of years.

SUNDBORG: Mr. Riley, has not the present Secretary of Interior and have not previous secretaries and the heads of the Fish and Wildlife Service, all said that they have no authority to abolish fish traps without an act of Congress?

RILEY: Yes, I believe that most of them have said that. I have heard it asserted otherwise.

SUNDBORG: But not by them?

RILEY: Not by them.

PRESIDENT EGAN: Are there other questions relating to Section 16? If not, are there questions relating to Section 17? Mr. Ralph Rivers.

R. RIVERS: Mr. Riley, Section 18 says that eminent domain proceedings may be undertaken for obtaining private ways of necessity to permit essential access for extraction or utilization of resources. Section 17 says that no person shall be involuntarily divested of his right to use of waters, his interests in lands, or improvements, other than by operation of law. I wondered why you didn't mention eminent domain in Section 17 as well as in Section 18.

RILEY: Well, we felt that "operation of law" would be the institution of condemnation proceedings. We might suggest that eminent domain will be covered elsewhere in the constitution. In Section 18 we give particular stress to eminent domain as concerns the utilization of resources, the getting to resources. This language has appeared in a number of the Western state constitutions. I believe this is almost verbatim from Wyoming.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Riley, it is true that eminent domain has already been covered by Section 17 of the bill of rights, which has been adopted in second reading by this group, and that reads, "Private property shall not be taken or damaged for public use without just compensation." Now, you'll recall, when the federal government took the city of Anchorage's rights in the Eklutna dam, that was public property, and I can't find any provision anywhere in the constitution or the proposals which provides for compensation for the taking of public property.

Can you refer me to any such provision?

RILEY: No, I think not.

HELLENTHAL: Would you object, then, to adding the following language following Section 18: "and just compensation for such taking, as well as the taking or damage of inferior property rights, shall be made." Now, that language would cover the taking of an inferior private or an inferior public property right in the process of this balancing of the beneficial interests and in the hierarchy of beneficial interests that you set up in this article. Would that language be --

RILEY: I see no objection to it, Mr. Hellenenthal. I'd like to get the full expression, though, if I may.

HELLENTHAL: That answers my question. I can give it to you later.

PRESIDENT EGAN: Are there other questions relating to Section 17 or 18? Mr. Taylor.

TAYLOR: Mr. President, I might say, with regard to Section 18, I believe that matter is partially taken care of in the present statute, in that the state reserves a strip of land along the section lines which will be used for roads for access, the egress and ingress to property. Then if there was no such a way, why, a person who has property, then the only way for access to it is over somebody else's land, they always have the right of eminent domain to secure a roadway across somebody else's land. The general law takes care of that to a great extent.

PRESIDENT EGAN: Are there other questions relating to Section 19? Mr. Riley.

RILEY: Mr. President, regarding Section 19, there too, there will be other coverage in the constitution which may well eliminate need for this, but the Committee felt obliged to throw in a statement on residual powers just to call attention to it for an appropriate place in the constitution.

PRESIDENT EGAN: If there are no other questions at this time, Mr. Smith, is it your pleasure that we hold up the amendment process until you have had time to have a committee meeting, and that each of the delegates who might have proposed amendments or questions that might lead to amendments meet with your Committee?

SMITH: I would so suggest, Mr. Chairman.

PRESIDENT EGAN: The Chair was wondering, Mr. Smith, just as a suggestion, if it might be that you would ask for a meeting in

the morning at our ordinary adjournment time, if that meeting might last for an hour or so, that the actual convening time or adjournment time of the Convention this evening might be set a little later, in order to allow your Committee to meet, and all delegates who might have questions know that the meeting would be set for that time, and be here and present to express their views? Mr. Boswell.

BOSWELL: It would occur to me that if we have an idea of how many might have amendments, it would give us an idea of how long we would need in the morning to meet with them. Could we have a show of hands of those that have amendments or questions that they would like to be heard upon before the Committee?

PRESIDENT EGAN: It seems that there are quite a number all right.

BOSWELL: About an hour, I would say. I would move that we stand adjourned until 10 o'clock tomorrow morning, and that we will meet with all those interested in discussing this article at 9 o'clock.

PRESIDENT EGAN: Mr. Boswell moves that the Convention stand adjourned until 10:00 a.m. tomorrow, with the understanding that the Resources Committee will meet at 9:00 a.m., and that all interested delegates be present at that time to be heard, and offer suggestions or amendments, such as they might have.

SMITH: Mr. President, I wanted to announce a meeting of the Resources Committee at 9:00 a.m. tomorrow morning in the gallery.

PRESIDENT EGAN: The Resources Committee will meet in the gallery at 9:00 a.m. in the morning. Mr. Sundborg.

SUNDBORG: Mr. President, the Style and Drafting Committee will meet at 9:00 o'clock in one of the committee rooms on the third floor.

PRESIDENT EGAN: The Style and Drafting Committee will meet in one of the committee rooms on the third floor at 9:00 a.m. Mrs. Sweeney.

SWEENEY: The Engrossing and Enrollment Committee at 9:00 a.m. tomorrow, also.

PRESIDENT EGAN: The Engrossing and Enrollment Committee will meet at 9:00 a.m., also. Mr. Hilscher.

HILSCHER: I should like to remind the membership that we have arranged for the one and only group photo of everybody tomorrow morning at 10:30, and would the gentlemen please have their hair combed and look nice?

PRESIDENT EGAN: Group photo will be taken at 10:30 a.m. Is that right, Mr. Hilscher?

HILSCHER: That's right.

PRESIDENT EGAN: Now are there other committee announcements or any other announcements to be made at this time? Mr. Victor Rivers.

V. RIVERS: Mr. Rosswog was to announce a committee meeting.

PRESIDENT EGAN: Does anyone know what time the Local Government Committee plans to meet in the morning? Mr. Fischer.

V. FISCHER: We have a meeting scheduled for tonight, and I assume that we will decide at that time. Tonight's meeting will be in town at Apartment No. 19, at the Alaskan Inn, as soon as the Committee can get there.

PRESIDENT EGAN: The Local Government Committee will meet this evening at Apartment 19 at the Alaskan Inn. Are there other announcements? If not, unanimous consent is asked that the Convention stand adjourned until 10:00 a.m. tomorrow. Is there objection? Hearing no objection, it is so ordered.