

FOLDER NO.

201.1

Apparently no minutes were kept by the Committee on Rules. The Journal records the final decisions of the Committee on matters which were referred to it for determination.

The attached papers relate to some of these matters.

The Committee on Rules was charged with the responsibility of resolving conflicts in the subject matter of Committee Proposals, and assigning the subject matter in question to its appropriate Article.

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① On the questions presented, the Rules Com recommends that Section 25 in the Legis Article be stricken ^{and its subj matter be later} considered with the Article on Apportionment

As to Sec 1 of the Legis Art the Rules Com recommends that it be considered now for the reason that the ^(apportionment) apportionment formula whenever adopted will apply against whatever number of Senators + Representatives is adopted and that if those numbers are now set, Apportionment has time in which to review its proposal.

As to other matters referred, the Rules Com asks that all Clump call to Rules after particular conflicts regarding pending proposals prior to their consideration and that Rules will then recommend to the Convention the assignment of such conflicting subject matter to a particular article and Committee

see page 8 top of "instructions" ^{majority vote}

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ALASKA LEGISLATIVE COUNCIL
Box 51 - Juneau, Alaska
December 30, 1955

MEMORANDUM

TO: Delegate Burke Riley
SUBJECT: Amendment or repeal of initiated laws.

In response to your questions we have made a brief survey of the problems that may arise if there is no language in the Constitution regarding amendment or repeal of initiated laws and laws defeated by referendum.

There is no general rule. A good summary of the question is found in 97 A.L.R. 1046, et. seq. As noted there:

The courts are not agreed on the question whether, in the absence of express constitutional or other provision prohibiting the amendment or repeal by the legislature of measures adopted by the people by initiative or referendum, such measures may be so amended or repealed (p. 1047).

Apparently if there is language to the effect that "initiative and referendum provisions (of the Constitution) shall not be construed to deprive the legislature of the right to introduce any measure," the legislature may amend or repeal initiated laws or acts adopted by referendums.

Most state constitutions do contain some provision for amendment and repeal, or a prohibition against actions by the legislature.

At base, the initiative and referendum are powers reserved by the people. Thus the act approved is direct legislation by the sovereign people, and not the act of the people in its representative capacity -- the Legislature.

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In its original form the Article on direct legislation contained language prohibiting amendment or repeal for a period of three years, which carried the necessary implication that after three years the legislature may amend or repeal such laws.

Silence in the Constitution will mean that we will not know what powers, if any, the Legislature will have with regard to initiated laws. The result will depend upon interpretation by the Court, and it is noted that the Washington and Oregon Supreme Courts have reached opposite results on this single question.

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DISCUSSION OF RULE 19
Constitutional Convention
University of Alaska
November 10, 1955

Delegate Riley read Rule 19. Moved its adoption and asked unanimous consent:

President Egan: The word "not" was inserted and that was qualified with the addition of the words "except upon invitation of the committee. Mr. Riley moved the Adoption of Rule 19 and asked unanimous consent.

Objection is heard.

Delegate Barr: I second Mr. Riley's motion for the adoption of Rule No. 19.

DELEGATE RALPH RIVERS: Mr. President, I rise in support of the motion. The committees have a lot of work to do and need freedom in which to express themselves to arrive at a consensus of their thinking, and accordingly, in all fairness, the committees could hear anybody who requested to be heard, and that is the reason for saying that the time of these committee meetings shall be posted or publicized by the Secretary. Everyone is supposed to know when we are meeting so that anyone can request to be heard, but we don't want to have them open to the public while we try to develop a consensus of our thinking and while we are doing all of our exploratory work. We think they can do better work if particular persons are heard from upon request, and that is the reason for the rule.

DELEGATE Hellenthal: Mr. Chairman, this is an unusual rule. I doubt if any other body has this such of rule. I know the Congress of the United States does not have such a rule, and I think we would put ourselves open to the well-deserved criticism that we are meeting in secret session, which has an ugly connotation, and criticism will be leveled at the group unless we adopt a more normal method. I would suggest the method of executive session. This is a matter

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involving the decorum of the Convention. That is the typical rule. That is the rule of the United States Congress. I think that this rule will involve us in great difficulties, and I see absolutely no need for it. Now, if the occasion develops that crack-pots, and I don't think there are many in Alaska, if they start plaguing us then we can take a rule such as the one recommended here, but in the absence of that demonstration, I think that rule has no place before our body. I have been through this before with city councils who elected to meet secretly, the word the newspapers always use, and I tell you that it does not work, and I see no need for it. If the need arises then let's handle the problem, but not now.

PRESIDENT EGAN: A motion is before us and is open for discussion.

DELEGATE SUNDBORG: Many deliberative bodies, ^{including} committee meetings of ^{the} United States Congress, are not open to the public except on invitation of the committees. Hearings are; but committee meetings are not. I have been excluded from them many times in Congress. I might say that our Legislative Committee meetings are not open to the public except on invitation. I might mention to you that the Federal Constitutional Convention barred the public from its plenary sessions, and it placed a prohibition upon its members even reporting outside of the Halls of the convention, and they came out with a pretty good result. I feel that we do have to have the freedom that we will have in committee only if we can speak without a lot of people sitting around breathing down our necks. If a matter comes before a committee that would require the presence of the public, I am sure any committee would be glad to invite the public in, or if any ^{member of the} public ever makes a reasonable request to be admitted I am sure almost every committee would be glad to admit the public, but I just don't think business can be conducted effeciently if the public is walking in and out through these

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committee rooms all the time we are trying to do serious business.

DELEGATE VICTOR FISCHER: Mr. Chairman, this Convention is being held in behalf of all of the people of Alaska. We hope that many Alaskans will have an opportunity to come to College and listen in on some of these sessions. If they come here they may ver well find that most of the time will be spent in committee sessions. If the standing rule is that the public is not admitted, these people may have to sit out in the lounge some place or be having coffee in the cafeteria. I think it is our responsibility to the public to give them an opportunity to watch this convention at work. The provision in the rule should not be negative. It should be an open committee deliberation with provisions for executive sessions, and since Mr. Hellenthal did not make a motion.....

PRESIDENT EGAN: There is a motion on the floor.

DELEGATE FISCHER: I would like to move an amendment to Rule No. 19. In the second line, after the word "public," eliminate the period, substitute a comma and insert the words "unless the committee by two-thirds vote of all of the members to which it is entitled votes to hold an executive session," and also in the first line remove the word "not."

PRESIDENT EGAN: Mr. Fischer then offers an amendment to Rule No. 19 removing the word "not" from the first line, inserting a period after the word "public" in the second line and inserting "unless the committee by a two-thirds majority vote by the members, to which it is entitled, votes to hold an executive session."

PRESIDENT EGAN: It has been moved and seconded that Mr. Fischer's motion be adopted.

DELEGATE HERMANN: Mr. Chairman, I think that probably the Convention should remember that no business is conducted in the committee itself. What we shall be doing in these committees is thrashing out minor details, maybe some major ones too, but the point of the matter is that

we have no power to translate that into action until it is brought before the Convention as a whole. If the public meetings to the Convention are open, which they certainly will be, any discussion on any matter pertinent to the Constitution will be open to the public. It is just a matter of operating a little more effectively and not burdening the public ear with some of the trivia which often comes up in committee meetings that impels us to put this in. I am sure that any committee at any time would have a public hearing on any issue that the public was interested enough in to ask for, or which we felt they should be interested enough in to ask for, but we have small committee rooms. They are just about big enough for the committees themselves, and when I get in one they are a little crowded. (Laughter) It is just a matter of efficiency and getting the lesser important details ironed out before bring it here to the Convention. We cannot adopt any section or take any important action without Convention approval, and that is the time when the public should come. I hope the amendment will fail, and that we will have the rule adopted as the committee has written it, because we have carefully considered this from many angles, and I believe it is a good rule.

MCLAUGHLIN

DELEGATE ~~XXXX~~ Do we not have some obligation to our host, the University of Alaska, for lunch on time? What about a meal hour when we are supposed to be there?

PRESIDENT EGAN: It was suggested this morning that we possibly recess at 12:30 instead of 12 o'clock. We can recess now if that is the wish of the Convention, but I would like to have the Clerk read the proposed amendment as it appears in the record right now.

CLERK ALEXANDER read the proposed amendment.

CLERK ALEXANDER: I don't believe that Mr. Fischer took into consideration

that unless he asks to have "except upon invitation of the committee" stricken it is going to be real complicated.

DELEGATE FISCHER: Mr. President....

PRESIDENT EGAN: Mr. Fischer, Mr. Taylor has been attempting to get the floor. Mr. Taylor, you are recognized:

DELEGATE TAYLOR: I was/^{n't}going to speak upon the amendment of Mr. Fischers.

It was more to reiterate the matters that Mrs. Herrmann has brought forth. Now in my experience in the Legislature, I have been on many committees and have been chairman of a great many committees. I think it would not be for the best interests of the committees to allow the public to come in and distract your thought and time from matters of great importance. In the Legislature I never knew of any committee that ever refused to hear somebody when they told us what they wanted to talk to us about. We let them come in and have their say, and we were glad to because we got worthwhile ideas which maybe we could incorporate in some bill. But just to let them come in to see what we are doing in a committee--it would be crowded, and I feel it would defeat the purpose of what we are there for. We are studying and discussing these matters in committee to try to bring on to this floor a concrete matter where the entire public will always be welcome.

DELEGATE Barr: A committee which is drafting a law or some provision of the Constitution for the future many times relates a past event which might possibly hurt someone of the public. Also, if the committee room is filled with lobbyists the committee members may be subject to pressure. They may be considering a measure which may have to be considered for days. Between meetings, of course, they are open to this pressure from lobbyists, and I do not think it is in the best interests of the people of Alaska to open these meetings to the public.

Now I have been a member of a great many legislative committees and have never been on one open to the public. Many have been invited in to testify and observe. There is no intention of anyone, so far as I know, to have a secret meeting. It is only for the purpose of better efficiency and for the best interests of the public that the public is excluded.

DELEGATE MC NEALY: I move the previous question be ordered.

PRESIDENT EGAN: It has been moved and seconded that the previous question be ordered, but the Chair would like to announce that at the present moment the wording is not exactly in order.

DELEGATE MC NEALY: I withdraw the motion.

DELEGATE MC LAUGHLIN: I move we recess for lunch and ask unanimous consent.

DELEGATE RALPH RIVERS: I object.

DELEGATE TAYLOR: I would like permission to bring up a special order of business. It is a motion having to do with the Convention. I move that the Secretary be authorized to arrange for the tape recording of all plenary sessions of the Convention.

Motion was seconded from the floor.

PRESIDENT EGAN: It has been moved and seconded that the Secretary have the authority to arrange for the tape recording of the convention.

DELEGATE SUNDBORG: That is a pretty big subject we should not get into before lunch.

PRESIDENT EGAN: If there is no objection we will hold that over as a special order of business till afternoon. If there is no objection the Convention is recessed until 1:45.

Convention recessed at 12:45

1:45

PRESIDENT EGAN: The Convention will come to order. We have before us at this time a special order of business. The Chair would ask consent that we pass the special order of business till we complete Amendment 19. We have before us Mr. Fischer's proposed amendment to Rule 19.

DELEGATE RILEY: Mr. Chairman, the noon recess ^{enabled} ~~encouraged~~ us to discuss this matter ^{Mr} formally, and with the consent of my second I would like to withdraw the committee's motion for adoption of Rule 19 as voiced by the Committee.

~~XXXXXXXXXX~~

PRESIDENT EGAN: Mr. Riley asked unanimous consent to withdraw his motion for adoption of Rule 19. Is there any objection. So ordered.

DELEGATE FISCHER: That automatically removes the amendment previously offered by me?

PRESIDENT EGAN: That would in effect remove the amendment offered by you.

DELEGATE FISCHER: Mr. President, I move that Rule 19 be amended to read as follows. "The deliberations of the Standing Committees shall be open to the public at such times as may be designated by the respective committees. If a committee finds it to be in the public interest, upon application any citizen may attend committee sessions. Each standing committee shall notify the Secretary of time and place of meetings and the Secretary shall make such notice public." I move the adoption of this amendment, and ask unanimous consent.

PRESIDENT EGAN: Mr. Fischer moves and asks unanimous consent that his amendment be adopted.

DELEGATE DAVIS: Mr. Chairman, that is not an amendment, that is a rule.

PRESIDENT EGAN: This chair stands corrected, that the Rule as offered by Mr. Fischer be adopted. Will the Clerk read the proposed rule again.

CLERK ALEXANDER read proposed rule.

PRESIDENT EGAN: Is there objection?

DELEGATE KILCHER: Point of clarification. As I understand it, we assume that the committees normally will be closed, that they only will be open on request.

DELEGATE FISCHER: Mr. Chairman, the intent behind this language of the rule is that the committees be free to act as they feel will best promote the work of their particular committee; in some cases they may feel that the committee sessions may be closed, but we certainly hope that ⁱⁿ most cases they will be open. But even if there is a closed meeting, under the second sentence, upon application the committee could still open their sessions up to specific individuals out of town.

DELEGATE KILCHER: I agree with the spirit of the thing, but I don't think the wording is explanatory enough.

PRESIDENT EGAN: Do you offer an objection, Mr. Kilcher? Unanimous consent has been asked that the Rule as proposed by Mr. Fischer be adopted. Is there any objection?

DELEGATE KILCHER: No.

PRESIDENT EGAN: If there is no objection, Rule No. 19, as proposed by Mr. Fischer, is ordered adopted.

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Secretariat/M

From The Formation of the Union: An Exhibit, The National Archives, Washington D. C. p. 5

The First Continental Congress, in September 1774, had passed a resolution for closed sessions and secrecy concerning its proceedings; and in May 1775 the Second Congress had readopted the same resolution. On November 9, 1775, Congress went further, requiring its members to sign the following agreement:

That every member of this Congress considers himself under the ties of virtue, honor & love of his Country not to divulge directly or indirectly any matter or thing agitated or debated in Congress before the same shall have been determined, without leave of the Congress; nor any matter or thing determined in Congress which a majority of the Congress shall order to be kept secret, and that if any member shall violate this agreement he shall be expelled this Congress & deemed an enemy to the liberties of America & liable to be treated as such . . .

Hawaii Rules:

(g) No public hearing shall be had by any Standing except after reasonable notice given to the Secretary, in writing, who shall give ~~the~~ public notice thereof.

New Jersey rules:

Rule 24. Public hearings before each of the General Standing Committees addressed to the subject matter, lying within its consideration in accordance with these rules or referred to it, shall be held as and when ordered by the Convention, by general or special order, and according to uniform rules to be made by the Committee on Rules, Organization and Business Affairs governing the notice to be given to the public of such hearings, and the method of conducting the same.

From The Living U. S. Constitution by Saul K. Padover: p. 4

Another rule demanded absolute secrecy of the proceedings: "that nothing spoken in the House be printed, or otherwise published or communicated." . . . An iron curtain thus hung over the convention, and for thirty-two years the secret of what went on inside was kept from the American public. Not until 1819, in the Administration of President Monroe, was the first Journal of the convention printed.

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From The American System of Government, McGraw-Hill Series in Political Science. Joseph P. Harris, Consulting Editor, p. 38

¹In their anxiety for secrecy the delegates took every precaution against "leaks." Sentries were placed at the door to prevent eavesdropping. According to the Beards ". . . they even had a discreet colleague accompany the aged Franklin to his convivial dinners with a view to checking that amiable gentleman whenever, in unguarded moments, he threatened to divulge secrets of state."

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