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Alaska's Struggle for Statehood

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Leading Articles**ALASKA'S STRUGGLE FOR STATEHOOD**

Hon. Fred A. Seaton *

This article and the one by Mildred R. Hermann which begins on page 265 will be of great interest to lawyers and legislators. Perhaps no one is better qualified than the Honorable Secretary to map the tortured legislative paths followed by "Seward's Folly" in its ninety-two year quest for statehood. The story is frequently incredible, always interesting.

Mrs. Hermann describes the Judicial Code of our forty-ninth state which has been based upon the most advanced concepts of judicial organization and administration. This should be required reading for those who repair the court systems of other states.

The Editors

The signing by President Eisenhower on January 3, 1959, of the proclamation admitting Alaska as the forty-ninth State of the Union, marked the formal conclusion of the longest and most difficult struggle for political recognition and status that any state has fought since the beginning of the Republic. This occasion was all the more notable because the statehood effort, by comparison, was the briefest and the only fully successful phase of a continuing ninety-year effort to provide essential and appropriate governmental institutions for the great northwestern continental area transferred to the United States by Russia pursuant to the 1867 Treaty of Purchase.

For historical orientation we should remember that Alaska, or "Russian America" as it was called, was the focal point on the globe where "East met West." Exploration and scattered fur trading-post settlements of Alaska by the Russians followed the voyage of discovery under Vitus Bering in 1741, a Dane in the employ of Czar Peter of Russia. This far-ranging exploration into the western hemisphere was the logical extension of the

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eastward movement that carried Russian domination across Asia to the Pacific.

Alaska was to serve as Russia's eastern outpost for only a little more than a century. In the fear that the British would seize it during the Crimean War, Russian officials suggested to the United States that we purchase the area.

This we did soon after the end of the Civil War. Preoccupied as we then were with the development of our own West, the purchase price of \$7,200,000, or roughly two cents per acre, of this northern "wasteland" was generally regarded as foolish. Many derided the transaction as "Seward's Folly."

Little attention was paid to our new acquisition. At the time, the fur seal rookeries and the other fur resources represented the only substantial commercial interest. Gold discoveries in the Cassiar District of British Columbia, however, in 1872 soon began to awaken a more substantial interest in the region and brought the vanguard of gold-seeking prospectors to southeastern Alaska—a vanguard that was to swell to thousands following the Canadian Klondike discovery twenty-four years later. During the 1870's the salmon resources of the region also had attracted the attention of Pacific Coast interests and the first cannery was established.

A Land Without Law (1867-1884)

Incredible as it may seem today, there was no civil government in Alaska the first seventeen years after the purchase. Although at the time of transfer President Johnson had asked Congress to provide a civil code, Congress failed to recognize the need. Only two pieces of legislation concerning Alaska were enacted during this long period. In 1868, Congress extended the customs, navigation, and revenue laws to the new area; and the next year legal provision was made for leasing the fur seal rookeries of the Pribilof Islands.

The only Federal civil official stationed in Alaska throughout this period was a collector of customs who was without any general governmental authority. For ten years, until 1877, the Army maintained a garrison which exercised *de facto* control, and after that the Navy exercised nominal control for seven years.

No legal provision had been made for the acquisition of title to land or mining claims; no contract or will could be enforced nor any marriage legally performed; no civil redress was available nor was any provision made for the apprehension or punish-

ment of criminals. Conditions in the few existing settlements were admittedly chaotic.

Although the customs collector, the military commander, an extra-legal "City Provisional Government" at Sitka, the citizenry, and newspapers appealed for the establishment of civil government, none was provided by Congress until 1884.

The District of Alaska (1884-1912)

The conclusion of the first phase of the struggle for governmental status marked the beginning of a longer and more difficult effort to obtain the barest fundamentals of self-government in the Anglo-American tradition. Civil government was established by the Act of May 17, 1884, which made provision for a governor and a district court and for extension of the U.S. mining laws, while specifically excluding application of the general land laws. The Act created a vaguely defined "right of occupancy" of lands and provided a civil code of extending the laws of Oregon to the newly designated District of Alaska. There was law in the land at last, but it was almost totally ineffective from the outset, since the Act prohibited the establishment of counties which were essential administrative units in Oregon.

This Act has been described by C. L. Andrews, an early Alaskan historian, as "the most inadequate and poverty-stricken system of government that has ever been imposed on any community under the United States flag."

The voices of the governors appointed by the President were added to those of the residents in the decades that followed. The principal political objectives were to obtain a territorial legislative assembly and an elected delegate to the Congress. But not until the "gold rush" era was action taken.

Then, in quick succession, Congress enacted a transportation and homestead act in 1898, a criminal code in 1899, and a civil code in 1900. The demand for an elective delegate was acceded to in 1906, partly because Congress felt the need for responsible advice on Alaskan affairs, which had become both tumultuous and pressing.

The struggle for organized territorial government was not concluded until passage of the Organic Act of 1912. The successful accomplishment of this long-sought objective was largely due to the effective work and ability of Delegate James Wickersham. As U. S. District Judge, he had taken a leading part in extending the judicial system and essential civil government into the

newly opened gold mining areas. Elected as Alaska's third delegate in 1909, he served seven terms in Congress between then and 1932. A vigorous and often controversial figure, he was a scholar and statesman with a high degree of historical perspective, and he had long been one of the most effective leaders in the home rule movement.

In winning his battle for establishment of a traditional territorial form of government, he had to overcome almost insuperable opposition from forces that were determined to set up a commission government based on the Philippine model. This form of government vested all effective powers in the appointed commission and was without elected officials or a legislative assembly. Because of the power of the opposition, it was necessary to accept "half a loaf" in order to obtain the basic elements of territorial self-government.

Although the general powers of the legislature were broad, the act precluded the establishment of a territorial judiciary and reserved control of the fish and game resources in the Federal Government. These and other specific inhibitions placed upon the new territorial government of Alaska were without precedent. Delegate Wickersham was himself unhappy with the weaknesses of the Act.

The Fight for Full Territorial Government (1912-1945)

Organization of the territorial government under the Organic Act of 1912 was accompanied by almost immediate demands for "full territorial government" or full "home rule." In summation, this may be said to have been the longest and least fruitful period in the whole struggle.

During this period, the Organic Act was amended in minor details but the only substantial change in the Act itself, until the end of World War II, was a reapportionment and enlargement of the legislature in 1942. None of the fundamental powers reserved to the Federal Government were relinquished, despite the continuing efforts of every delegate, every legislature, the appointive governors, the press, and innumerable civic and public organizations.

Delegate Wickersham, in introducing the first statehood bill in 1916, undoubtedly was seeking what he recognized to be the only feasible long-range goal. Though the introduction of this bill cannot be marked as the beginning of the active statehood movement, it certainly constituted a gesture to the future. Despite their dissatisfaction with their limited territorial powers,

Alaskans were not at that time prepared to meet the obligations of statehood. No further statehood bills were introduced by Delegate Wickersham or any of his successors until World War II.

The Statehood Struggle (1945-1958)

The Statehood Movement Takes Shape

Any attempt to fix the beginning of the statehood movement must necessarily be an arbitrary one. Although a small but increasing number of Alaskans had considered and discussed statehood for several preceding years, 1945 can be noted as the beginning of the active movement. That was the year in which the legislature provided for a referendum on the subject of statehood at the 1946 general election. Organized Alaska Statehood Committees took root throughout the territory. And Delegate Anthony Dimond introduced the second statehood bill in December 1943, twenty-seven years after Wickersham's bill.

The impact of war-time developments on Alaska had been overwhelming. A great increase in population and economic activity had taken place. Alaska had been brought to the attention of the nation as its military value was better understood—a value which General "Billy" Mitchell in 1935 had appraised as follows: "I believe in the future that he who holds Alaska will hold the world—I think it is the most strategic place in the world."

Old time Alaskans who had become accustomed to the *status quo* were taking a new look at themselves and their governmental status, often spurred to new ideas by the large numbers of new citizens who had moved there from the states. These new Alaskans were perhaps even more impatient than the "old timers" with the inadequacies of their territorial government and the limitations on their personal rights of citizenship. In the 1946 referendum, the vote was 9,630 for statehood to 6,822 against. With this record of public support in Alaska, statehood for Alaska was presented to the 80th Congress.

The Congressional Battle

The statehood legislation for Alaska received active attention in six Congresses, the 80th through the 85th—a period of 12 years which, to the proponents of statehood, and perhaps to the more casually interested as well, seemed to stretch out interminably. The much longer and completely futile effort to obtain "full home rule" powers as a territory, from the enactment of the 1912 Organic Act until the opening of World War II, should

have equipped Alaskans with a high degree of Confucian patience. But once the die was cast and a large majority of Alaskans convinced that statehood was the only answer to the fulfillment of their political status in the Union, the course of the battle was often nerve-racking.

Favorable action in legislative committees frequently raised high hopes, only to be dashed by the emergence of apparently insuperable road blocks. Usually, in the House of Representatives there seemed to be a favorable majority on the floor for statehood. However, the power of the Rules Committee was, in later years, the dominant cause of delay. In the Senate the situation was less clear.

The first serious consideration given to the statehood cause started in the 80th Congress. Hearings on a statehood bill, H. R. 206, introduced by Delegate Bartlett, were conducted in April 1947, in Washington and that summer in Alaska by the Subcommittee on Territorial and Insular Possessions of the newly constituted House Committee on Public Lands. A separate bill, H. R. 1808, introduced by Representative Angell of Oregon, was considered in conjunction with H. R. 206.

An Alaskan statehood bill, the first ever approved by any committee of Congress, was unanimously reported to the House on April 14, 1948. Since Congress was looking to an early adjournment before the national political conventions, no rule was obtained for such a major measure whose final prospects were so dim, particularly in view of the fact that the Senate had not reported a similar measure. Thus, the favorable action of the House Committee of the 80th Congress was primarily evidence of good will and a promise of future support at a more favorable time.

During the 80th Congress, it is also important to note, the House did pass a bill to grant statehood to Hawaii, H. R. 49, by a vote of 196 to 133.

In the 81st Congress the outlook for Alaska improved. In the first session the House curbed the powers of the Rules Committee and reported to the floor an Alaska bill. It was not, however, until the second session that this bill was brought up for debate. The House finally passed the Alaska bill by a vote of 186 to 146. On the Senate side, the Alaska bill was approved in Committee by an 8 to 2 vote and was debated at length on the Senate floor. However, the threat of a filibuster led the majority leader to withdraw his request for consideration of the measure. While it was unfortunate that this threat was not met head-on,

Alaska statehood advocates could point out that they had won approval in Committee in both houses and on the floor of the House of Representatives.

In the 82nd Congress the principal scene of action was the Senate, where the Committee on Interior and Insular Affairs reported favorably early in the first session. Again, the measure (S. 50) was not brought to the floor until the second session, in 1952, and, after extended debate, was defeated by a 45 to 44 vote.

During the 83rd Congress, there were two developments which deserve special attention: first, a substantive change in the approach to drafting an Alaska statehood bill; and second, the unfortunate action which combined Alaska and Hawaii statehood into one legislative package.

Until this time, each Alaska statehood bill had tended to be a virtual copy of the bills of preceding Congresses. In the summer of 1953, Senate Committee hearings in Alaska brought to the surface, from both opponents and proponents, a strong strain of criticism of the specific terms of the legislation. While granting technical political equality to the Territory, it was pointed out, the bill would keep Alaska in a position of marked economic inferiority, because of the preponderant influence there of the various Federal land-owning agencies and the restrictive effect of Federal resource policies which were hampering sound economic development.

The Committee was moved, upon its return to Washington, to embark upon a full-scale exploration of Federal land and resource policies in Alaska. Responsible officials of the principal Federal agencies in Alaska were questioned, and prolonged executive sessions then were held by the Committee, at which the terms of the legislation were drastically recast.

The resulting bill provided a land grant of over 40 million acres, and gave the State the right to take mineralized lands as part of its grant from the Federal Government. (Later, in the 85th Congress the amount was raised to over 100 million acres by a distinguished Nebraskan, Congressman A. L. Miller.) Since Alaska's wealth lies largely in its minerals, the inclusion of mineralized lands in the proposed grant was of major importance. Lands for suburban development around the communities, even including fringes of the national forests, were provided in a special grant, and another portion of the bill imposed strict limitations on unnecessary withdrawals of vast acreages of land by Federal agencies. Such troublesome issues as native rights, forest revenues, and tidal flat land title problems were also dealt with courageously and generously.

The Committee in its report referred to the rewritten bill as a "new approach" to statehood, and argued against leaving "the Federal Government in a position of overwhelming dominance over the land and resources of the new State and its people." If Alaska is to be a State, it must be a full and equal State, not a puppet of the Federal Government," the report declared. All subsequent statehood bills considered by either House, including the one ultimately enacted, largely followed the terms of the 1954 Senate Committee bill, S. 50.

The fruits of that Committee's work were not to be fully realized for several years, however, as Alaska statehood was once again caught in a parliamentary tangle.

In the House, both Hawaii and Alaska statehood bills were reported to the floor, and an Hawaii bill was passed. The program in the Senate in early 1954 scheduled action on Hawaii statehood first. However, repeated assurances were made that the Alaska bill would be considered immediately after the Hawaii bill. In fact, the majority leader gave a firm promise that this would occur. As the debate on the sister applicant proceeded, a move was made to add the Alaska statehood bill as an amendment to the Hawaii statehood bill, on the floor of the Senate. Opponents of statehood for either territory hoped that this action would ensnarl the combined bill in a parliamentary situation from which it could never be extricated, and they supported the amendment. This strange coalition—made up of those who favored Alaska, and opponents of both Alaska and Hawaii—succeeded in tying the two together. Unfortunately, as it turned out, this maneuver resulted in setting back the possibility of statehood for Alaska or Hawaii at least four years—the time it took to get the bills considered separately again, and each on its own merits.

Unfortunately this was the only statehood vote in which the split was almost on a party-line basis. It left the erroneous impression that Republicans sought only the admission of Hawaii and Democrats only the admission of Alaska.

Although the joint bill did pass the Senate, it had to return to the House for consideration of the Senate "amendments." Several attempts were made to obtain that consideration, including a proposal to grant statehood only to the more populated part of Alaska, but the momentum of the statehood movement had now been lost.

The process began anew when the 84th Congress convened. Hearings were held again in the House Committee in January

and February 1955 and the Committee once more favorably reported a statehood bill, this time a combined bill including both Hawaii and Alaska. The full House recommitted the measure by a vote of 218 to 170, and no further action was taken in that Congress.

While the Congress had failed to enact statehood legislation, it had passed a variety of other measures, with the support and endorsement of the executive branch, which assisted in rectifying at long last some of the inequities which Delegate Wickersham and his successors had complained of throughout the years since 1912. Progressively, since the close of World War II, the restrictions on the authority of the territorial government were being relaxed and Alaskans were being granted increased responsibility for essential and basic governmental services. The Federal Government had also embarked on a program of building and improving the basic facilities required for modern living—roads, schools, hospitals, and various utilities. And more often than not, the territory or its local subdivisions were full partners in these programs.

Although statehood legislation made no progress in the 84th Congress, the stage was being set for another drive and proponents of statehood busied themselves in obtaining wider support. They also had learned by experience that efforts to combine the Alaska and Hawaii bills resulted in combining the opposition to either against favorable action on such a joint bill.

The Final Effort

Victory was finally achieved in the 85th Congress. Hearings on the principal Alaska statehood bills were conducted before the House and Senate Committees between March and June of 1957. The House Committee favorably reported its bill, H. R. 7999, on June 25. The Senate Committee completed action on its bill on August 29, as the first session was drawing to a close.

Statehood proponents acquiesced to recommendations of the House leadership and agreed to bring the bill up early in the second session. When efforts to obtain Rules Committee approval for bringing the bill to the floor remained unsuccessful as the session passed midpoint, it became necessary to resort to a rule of the House which gave statehood legislation privileged status. The bill could be brought up for debate on the motion of the Chairman of the substantive committee, supported by a majority vote. In this way the bill came to the floor and was enacted by the House on May 28, 1958, by the vote of 198 to 176. Why this procedure was not used before is a matter of conjecture.

The Senate Committee bill differed in minor particulars from that which had been passed by the House. These differences would have required conference committee action, if the Senate had acted upon its own bill, and the resulting parliamentary maneuvers might have resulted in another defeat. Therefore, the Senate proceeded by taking up the bill enacted by the House. After a remarkably short period of debate, on June 30, 1958, the bill was passed by the Senate, without amendment, by the overwhelming vote of 64 to 20.

And here, I believe, credit should be given to the minority (Republican) members of the Senate in the 85th Congress. They remembered well the fact that the program they had scheduled in the 83rd Congress had been interrupted because of the motion to join Alaska to the Hawaii bill. And when they asked for similar assurances from the majority leadership of the 85th Congress that Hawaii legislation would be considered immediately after Alaska, no such assurances were forthcoming. However, because of the feeling that partisan considerations should not again defeat the hopes and aspirations of Alaskans and Hawaiians, the Senate minority stood firmly opposed to any motion to join the two bills as had been done in the 83rd Congress. It is a tribute to former Senator William F. Knowland that retribution was not forthcoming.

A Look Back

In this brief resumé of the legislative progress of the statehood struggle, it is impossible to detail all, or any considerable number of the issues, pressures, and prejudices that influenced the course of the legislation. It is equally impossible in the scope of this review to provide any meaningful analysis of the substantive provisions of the many bills that were considered and the significant changes that were adopted from time to time.

There were occasions, I am sure, when language of the Act of February 18, 1791, admitting Vermont to the Union in a single forty-six word sentence, must have caught the eye and stirred the envy of some of the able and imaginative attorneys who, in the Department of the Interior and on the staffs of the Congressional Committees, wrestled with the intricacies of the legislation. Without doubt, the most interesting legal and substantive features of the legislation will be treated elsewhere. It is perhaps sufficient to note that the Alaska legislation, as enacted, was more complex than any previous statehood measure. This, in part, reflected the growing complexity of the Federal-State relationship in the period since the last previous states were admitted.

It was also caused by the high degree of Federal involvement in normal territorial or state functions in Alaska, and of financial responsibility which had been accepted by the Federal Government through the years for the provision of services ordinarily provided and paid for from state or territorial revenues.

There are, however, several other aspects which affected the outcome of the statehood battle which deserve attention here.

A Bipartisan Victory

The final statehood victory was made possible only by effective bipartisan support—the kind of bipartisan support evident in the Senate where 33 Republicans and 31 Democrats voted in favor of the bill on final passage. There were plenty of opportunities for statehood for both Alaska and Hawaii to go aground on partisan shoals and there were times when it appeared that efforts to play Alaska against Hawaii, and vice-versa, might seriously threaten statehood for either or both territories. The fact that we do now have 50 States within the Union reflects credit on both the Administration and the Congress.

President Eisenhower had repeatedly spoken out for the cause of statehood for both Alaska and Hawaii, and, of course, both territories had the strong and effective support of the Interior Department. Though narrow partisanship was periodically stirred by some who were inclined to weigh the issue in terms of immediate short-range party advantage, broad-gauge statesmen prevailed in their position that the continuation of the American tradition of self-determination was of far more importance to the Nation and to the fundamental values of our process of government than any short-range political objective.

Public Opinion and the Press

Through the latter years of congressional struggle, public opinion, as expressed in almost every forum in the Nation, strongly supported statehood for both Alaska and Hawaii. Resolutions and endorsements came from almost all of the major national public interest groups, such as women's clubs, veterans' organizations, church groups and labor unions. It was supported officially by resolutions of the Conference of State Governors and by resolutions and memorials enacted by many of the state legislatures. The newspapers and press of the Nation were as nearly universal in their support as could be expected on any issue and the continued impact of this support was of immeasurable significance. In an editorial comment on June 30, 1958, the afternoon of final pas-

sage of the statehood bill by the Senate, the Daily News-Miner of Fairbanks had this to say:

A Salute to the American Press

Statehood for Alaska fought an uphill fight all the way. It was not easy to overcome the inertia of a situation in which no state had been admitted since 1912 and surmount all the other difficulties confronting Alaska.

The instrument which got the idea across, God bless it, was the American press. Newspapers all across the Nation plugged Alaska statehood effectively and consistently. The press swung public opinion behind the issue. Then it kept up the campaign until congressional opinion, too, was won to the justice of statehood.

Such support for the statehood movement was, of course, no accident. Among the ranks of the Alaskans who helped produce the mighty wave of favorable opinion were C. W. Snedden and Robert Atwood, editors and publishers of Alaska's two largest daily newspapers. Through "Progress Editions" and other special issues these men did not leave to chance the function of informing their counterparts in the United States media of communication. What they helped set in motion left no room for doubt on the part of the 85th Congress that the Nation, and not just Alaska and Hawaii, was ready for two new states.

Conclusion

The success of the movement for Alaska statehood is thus attributable to a wide variety of forces and circumstances—to a citizenry in the territory and in the Nation at large which became increasingly concerned by Alaska's territorial status, to effective bipartisan support for the legislation within both the executive and legislative branches, to the newspapers of the Nation which urged statehood with vigor and enthusiasm. Without any one of these, we would still be a Nation of forty-eight states, embarrassed by a vast and rich territory in the north to which we were unwilling to accord the status it so clearly deserved. We can all take pride in our having finally recognized the wisdom and acknowledged the justice of admitting Alaska to the Union.