

DELEGATE MORGAN: That is correct.

THE CHAIRMAN: Are there any further questions, Delegate Bamberger?

DELEGATE BAMBERGER: Chairman Morgan, I would ask you to think again about your answer to Delegate Chabot's question which asked you whether the governor or the attorney general would decide whether the State would appear as an amicus in some case in which it was not a party and whether the governor or the attorney general would decide whether the state would press an appeal in a particular case.

I direct your attention to page 2 of Committee Memorandum EB-2 and particularly lines 32 to 35 in which I understand you to define the role of the attorney general as a lawyer for the executive branch, and not a policy maker. I suggest to you that if the attorney general is the one who decides a position which the State shall take in the case in which it is not a party that he is, in effect, making executive policy and that if it is the attorney general who would decide whether to press an appeal, he is again making policy.

My question to you is whether or not it is not the intention of the Committee that the attorney general is a lawyer for the governor in the State and that he acts pursuant to the advice and requests, pursuant to the instruction of his client?

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: I really think that the attorney general is a constitutional officer and he is given constitutional functions and duties as the chief legal officer of the State and it seems to me that he has certain independent duties that he has got to do independently and he is not particularly responsible to the governor except when he is serving in a legal capacity for the governor.

THE CHAIRMAN: Delegate Morgan the Chair is puzzled. In the discussion that occurred last week dealing with this same subject, several illustrations were given. There was a colloquy between Delegate Byrnes and Delegate Henderson, as the Chair recalls it, in which an illustration was pointed out of a case pending in court and a problem as to whether the decision of the lower court should be appealed.

It was the Chair's recollection that it was stated very specifically that it would be the function of the governor as the client representing the State and the chief executive officer to determine whether an appeal

should or should not be taken and that the function of the attorney general was that of lawyer performing the usual function of a lawyer representing a client.

This arose during a discussion of the Committee Report with respect to the office of the attorney general.

I am puzzled. Are you intending to indicate now a different position of the Committee with respect to this question?

DELEGATE MORGAN: Mr. Chairman, my recollection of that discussion was that it was the attorney general who would decide whether to appeal the case or not.

THE CHAIRMAN: The question was put by Delegate Byrnes with respect to a case pending in the U. S. District Court and I think Judge Henderson was the one who commented on it, and I thought the general conclusion was that the question of an appeal was a question of state policy which would obviously be decided by the governor.

I may be wrong in that, but that was the Chair's recollection.

Delegate Henderson, do you remember the colloquy?

DELEGATE HENDERSON: I remember it very well. The Chair has stated my position quite clearly. If it is a matter of policy as to whether or not an appeal shall be taken, the governor in the role of client can control that.

But if it is a question of a legal opinion, expressing his view as to what the law is, then in that field the attorney general would be supreme but, certainly, not in matters of state policy involving appeals and I thought that was made clear last week.

THE CHAIRMAN: Delegate Morgan.

DELEGATE MORGAN: I am sorry that I just remembered the conversation the other way. I thought that it was decided that it was the attorney general who decided whether to appeal or not to appeal.

Apparently I was wrong.

THE CHAIRMAN: You were not meaning to indicate that the Committee had consciously taken a different position on the matter from that which was before the Committee of the Whole last week?

DELEGATE MORGAN: I was not, Mr. Chairman.

THE CHAIRMAN: Delegate Gallagher.