

Donald Mitchell oral histories, Archives and Special Collections, Consortium Library, University of Alaska Anchorage. Victor Fischer interview, 1989 December 1. Transcript completed by Louisa Dennis.

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MR. MITCHELL: I think at the time -- if I can pull this out of my pocket -- I think Hugh Wade was probably the regional solicitor, because I think Bob Bartlett had put Hugh in to -- to be the chief attorney for the interior department at the time.

MR. FISCHER: He -- he might have been.

MR. MITCHELL: Now those would be the only kind of guys who -- who would have been paying attention to all the -- all the stuff today that everybody's wringing their hands over. But, well, how about if you --

MR. FISCHER: Well -- but in any case, it was -- at that point there was no regional organization in rural areas either. So we -- you know, we didn't have NANO or any of these regional organizations that might speak for the villages in the regions. So if there had been any question at all, we would have come sort of from the individual village councils that, you know, the tribe -- tribal entity -- that I doubt very much that they thought of themselves at that point as sovereign entity -- tribal entities, that dealt directly with the federal government.

MR. MITCHELL: Well, I guess that's another thing. I suppose it's -- to be fair about all this -- then it's probably worth putting on the record, because we take all this other stuff for granted today, and that, of course, is in 1955, '56, there obviously were no, you know, telephones in villages. The microwave system didn't even come in until after that. There obviously were no newspapers; there was no public radio; there was no war on poverty, so there wasn't any money.

MR. FISCHER: Right.

MR. MITCHELL: So the idea that -- that -- that if there were people that -- that actually -- I don't -- I don't -- my guess would be that -- that I'm with you. That these people probably -- this was not of anybody's scope inabilities, but I don't have any personal knowledge of that.

MR. FISCHER: And -- and I would say that from the standpoint of sort of Alaska at large. There was, at that point, no Native issue that was before the general public, before the legislature, in years after the convention period came, when there was talk of the Native problem quote/unquote. And the Native problem was poverty and lack of jobs, poor health and so on. And that was in the -- that was into the '60s, mid-'60s when the war of poverty was going. And we had the quote, "Native problem," unquote. And -- but that didn't exist in '55, '56. It was basically no public concern with the -- with the village situation.

MR. MITCHELL: Right. And then also -- but then also from -- from the village on into the convention, because of all these -- the lack of money for communication systems whatever -- but I would assume that there were not many people from villages that showed up to testify in any subject that --

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MR. FISCHER: Yeah, I don't remember anyone from villages testifying. We had a delegate from Unalakleet, who was a minister, Maynard Londborg on the local government committee. From Kotzebue we had John Cross who certainly knew the community.

MR. MITCHELL: Now he was a Gussik or --

MR. FISCHER: He was a Gussik, married to an Eskimo woman. And I -- and he was a pilot -- Bush pilot. So he was all over the place. He was an older fellow, sort of long in that area and very thoroughly steeped, but he -- he was not a village elder or village representative, but nor was -- nor was Londborg. In fact, the only Native in the whole convention was Frank Peratrovich from Klawock who had been elected at large in Southeast. But he had already been a caricatural senator and was well known and highly esteemed. And he was not elected as a Native spokesman.

MR. MITCHELL: Okay. Well -- so -- so then I guess the next question would be that -- so you guys then decided this unorganized borough business, and I guess it's worth just at least putting on the record, whether or not -- again, that everybody assumed when you created the unorganized borough that the unorganized borough included basically the entire geography of Alaska except those areas that became boroughs. Is that --

MR. FISCHER: No.

MR. MITCHELL: Am I --

MR. FISCHER: No.

MR. MITCHELL: I said it wrong?

MR. FISCHER: We -- in fact, that's the way the State government, not interpreted, but acted under the constitution. The concept under the constitution, you know, was never that there is an unorganized borough. The term is always used in plural. And the constitutional convention had in mind that the State -- at the State level there would be a delineation of regional units. It would be boroughs.

MR. MITCHELL: You mean, like, the equivalent of, like, the -- like, ANCSA regions?

MR. FISCHER: Yeah. Something -- let's say the ANCSA regions and the logic socioeconomic units. And there's some language in the constitution that has common socioeconomic interest, and so on. And the -- the idea was that those areas would be delineated, and then with participation of the people in each area, there would be a determination. Well, this should be an organized borough, which would actually function as a government -- government -- local government and municipal government or would be unorganized. Which would be administered by the State, but still have some participation advisory committees and so on, made up of local people who would participate in the governments by the State in the provision of services to that

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particular region. So the concept from the beginning was that we would have these boroughs, unorganized boroughs, for all the rural areas of the state.

MR. MITCHELL: So it would be sort of the equivalent today of -- of the way we've divided the Bush up into REAA school districts, is that --

MR. FISCHER: Something like that.

MR. MITCHELL: Except rather than providing education, it would be providing lots of other --

MR. FISCHER: Right.

MR. MITCHELL: -- but what if -- if the common view of it is the one that I erroneously just articulated, how did that get -- get haywire?

MR. FISCHER: Well, it -- when Alaska became a state, there was really no urgency in setting up a borough system. So during the transitional period, one of the consultants -- we had a constitutional convention -- John Devost (phonetic) was hired by the state to look at the question. Should we organize the boroughs now and basically -- and I -- I worked very closely with him. The answer was it's no hurry, you know, and every transition report was issued, and people basically sat back. And then all of a sudden, some bond attorney says, "Whoa. It says that this shall be boroughs and cities only." And the school district wants to issue independent school district that existed from a territorial basis and existed under the State once the issue bonds. And they don't have authority to issue bonds. So whoops, we've got to do something about it. And no -- first -- first the -- the -- gradually legislature authorized the establishment of boroughs. And nobody was interested in establishing boroughs and taxing themselves, except what is not -- what is the Bristol Bay Borough in Naknek. And then a couple of communities needed a high school, so they decided, well, we'll tax the canneries in this area, so we'll establish a borough. And Jay Hammond was part of that. And they established a borough and built themselves a school. But aside from that, nobody acted. And then all of a sudden there was an issue of what -- what shall we do? And so at that point they decided that John Rader sponsored what is now called Mandatory Borough Act. Where --

MR. MITCHELL: Like '61 or something, wasn't it?

MR. FISCHER: Yeah. Where -- I think so.

MR. MITCHELL: Yeah.

MR. FISCHER: '61 or '2, where the -- the areas that independent school districts (indiscernible) seven or eight or so, more or less. I had to dec- -- had to either voluntarily establish a borough, or as of a date certain, the -- the election district that covered that area would become the organized borough. And they would have to exercise the education function, planning, taxation assessment, and so on. And so Anchorage and Mat-Valley and Juneau and lots of others went under that. But

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it was in the context of these first early enactments that -- where they didn't want to bother, basically, with the rest of Alaska. You know, they didn't want to face up to -- have -- doing -- having any initiative. They -- at the State level decided, well, anything that's not organized as a borough shall be one unorganized borough.

MR. MITCHELL: Of course, you know, that raises the question that Article X says that everything -- we would be boroughs or cities. But then there was no -- actually -- well, this actually raises a very interesting question, which is if -- if there was a Mandatory Borough Act to, like, get people off their duff, with respect to this borough business, how come there was no real push in the legislature to make all these villages, as a matter of public policy, organized municipal governments? I mean, it seems you've created this opportunity in Title X, that basically the State was going to, like, use these cities. And the organized borough would be -- unorganized borough as -- as sort of a vehicle for -- for dealing with these little communities from the state out. And then nobody appears to really have pushed all that. You know, there's some -- some villages after statehood organized second-class cities, and, you know, about a hundred of them -- 109 I think did. I would say 220 -- about half -- and some of them had IRA councils and some of them had traditional councils. And they organized under -- under the state law that you guys created. And then a hundred of them didn't, and there doesn't seem to be any state policy that much cared about that. But --

MR. FISCHER: I -- I would say that the reason nothing was done about the borough -- so the unorganized borough -- and nothing was done about the 200 communities -- or 100 communities -- was that nobody gave a -- gave a damn at the state level. And the 100 -- or about 90 of them that did incorporate, incorporated because AVEC came along. The Alaska village of Electrification Co-op. And some lawyer somewhere along the lines said for us to deal with village -- villages and provide their electricity; they've got to be incorporated. So the villages -- and they sent out the forms for incorporation or whatever it took, and the villages wanted electricity. So they went through the step -- steps necessary to establish a municipal corporation. And as Akiachak and others have shown, they don't -- never really cared about being in the municipality. And when they really seriously thought about it, they said, "To hell with them. Let's just incorporate." And a number of them now have.

MR. MITCHELL: Right. Well, do -- I wonder who -- I would love to know who the lawyer was for AVEC.

MR. FISCHER: I have no idea. But that sort of, like, the bond attorney who --

MR. MITCHELL: Right.

MR. FISCHER: -- forced the mandatory borough incorporation. We might still not get boroughs in Alaska, except Bristol Bay, if somebody hadn't said there was a problem with bonding -- the bonds of municipal -- of school districts.

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MR. MITCHELL: Well, so then, to a certain extent then, I don't mean -- I don't want to prejudge this, but -- but -- but there seems to be this disconnect then in a political sense between the vision that -- if I understand correctly, the vision that the local government committee had during the constitutional convention. Is that, by this point in time, Alaska would be completely chopped up sort of the way -- for lack of a better example, the way the ANCSA regions are today. But each of those regions throughout the entire state would have a borough government. And then all of the communities inside each of these boroughs would be organized under Alaska laws and the municipality, and everybody would be copacetic. Is that -- I mean, am I overstating the -- the vision you guys had in the convention?

MR. FISCHER: I -- I would say the vision was at a more abstract level. That -- that we should provide the opportunity for local self-government. And I think so far as people wanted to take advantage -- or the state needed the local government structure -- actually would be taken to establish these local government units. And in the way the North Slope Borough is an example of a rural region that saw an opportunity to use the constitution and established a home rule borough and has become wealthy as a result of it. You know, the instrument -- instrumentality was there and the -- instrumentality? The -- the legal structure --

MR. MITCHELL: The structure was there --

MR. FISCHER: -- was there, and they created the instrumentality or whatever. But anyway, the North Slope Borough went through the process of establishing a home rule borough so they could take advantage of the petroleum industry located within their region. And Nanook has done the same thing. And so -- and the regions are very logical. And they did follow the ANCSA Regions. I have, for years, been preaching the concept of regionalization. I did right from the start. But my urging the local boundary commission sponsored a study called a model borough. The model borough boundary study or something like that, where they finally came around and delineated regions in Alaska that would be logical boroughs. There was a meeting in Juneau last year for -- they invited me and George Rogers and Tom Stewart to meet with them and sit with them -- talk about where we are and where we need to go. And I've done this several times over the decades. And again, sort of as they talked about the problems they're dealing with, my prescription to them, now that they have the model boundaries, is take the next step and propose incorporation. Actually establishing organized boroughs in the areas that basically have the tax space, because one of the issues that's coming more and more to the floor is that the state isn't going to fund everybody at the level of (indiscernible).

MR. MITCHELL: Well, it actually -- that actually anticipates my next question, which -- which as it seems to me in retrospect, I mean, because the -- what it reminded me of was the borough -- the North Slope Borough and what NANA's done with Northwest Arctic Borough. And even what Hammond and -- and I guess (indiscernible) was still saying in those days for the Bristol Bay Borough or the Naknek Borough, or whatever it was, that -- that this whole -- this whole structure in Article X -- the whole concept of municipal government presupposes that within the confined -- or maybe, this is I guess my supposition I guess, (indiscernible). It seems to me that local government presupposes that within the jurisdictional boundaries of that local government,

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there in fact will be a tax space that can fund that government. Which is why, when that tax space exists, as -- as what happened in the North Slope and what happened with Northwest Arctic, and with respect to the cannery in Bristol Bay, people will say, "Yeah, let's organize a local government and provide ourselves services by tapping into the tax space." But if you have a situation throughout most of rural Alaska where there is no tax space, then -- then unless the State was going to come down from on top -- and the AVEC thing, to give you an example, which is we're going to give you this money, if you funnel it through this legal apparatus, then local government doesn't make any sense or am I being too --

MR. FISCHER: Well, essentially we have done that through the establishment of the REAAs and school districts -- rural school areas where the State has said, "Okay, we will fund schools, but there's got to be an area-wide structure with a -- with a local board and, you know, certain level of participation and the home rule, even though we participate by financing it." And at this point probably a logical step for the State would be to use the REAAs and say, "Okay, if you want something else, you know, it's a borough and you -- and you can be an unorganized borough and you have these advisory functions and so on." So it -- basically we've moved in that direction except we call them REAAs.

MR. MITCHELL: Right. So --

MR. FISCHER: In other words, when -- when the State is enforcing the REAA's to tax, you know, just like the NANA -- Northwest Region had an REAA. And it was a local decision for them to transform themselves into an organized borough.

MR. MITCHELL: Right.

MR. FISCHER: And then adopt a whole new (indiscernible), and get rid of the REAA. And -- but that's essentially the progression of us seeing by the -- by the local government committee in drafting the article that an area could be unorganized, but exercise certain planning functions, advisory functions, do certain things, and gradually, if capable, will -- would organize status.

MR. MITCHELL: Right. But, of course, you know, on the other hand, you know, about the time this all started to become an issue, which was in the early 1980s, I can remember that there was municipal revenue sharing. And I think you were probably in the legislature at this point, but there was municipal revenue sharing. But then, of course, Fergus and Sackett and other people said, "Oh, well, this is terrible because -- because we don't want -- you know, there's all these villages that aren't municipal governments, because this --

MR. FISCHER: Yep.

MR. MITCHELL: -- for some reason they didn't buy into the AVEC deal or whatever reason there was." And so therefore, there was this whole legislative program to give out money to local villages without requiring -- they could have said, "Fine, if you want the money -- as a matter of

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state policy -- if you want the money, organize a municipal government. If you don't want the money, don't organize the municipal government." But the legislature didn't say that.

MR. FISCHER: Right.

MR. MITCHELL: It was like it had no policy as to whether or not it had a preference with respect to what --

MR. FISCHER: And it -- it didn't. The legislature had no policy.

MR. MITCHELL: Even though -- even though Article X of the Alaska Constitution, you would have thought would have settled that policy choice for them. Or am I being -- I mean, did the (indiscernible) analyze that?

MR. FISCHER: Well, no. The article says there shall be boroughs and cities only.

MR. MITCHELL: Right.

MR. FISCHER: Or taxation as I remember. It -- it deals with taxation. The tax policy.

MR. MITCHELL: Right.

MR. FISCHER: (Indiscernible) cities and boroughs. But that doesn't mean that every community has to be a city or, strong preference, a borough. In other words, it -- it doesn't say any settlement -- any group of 25 people or more shall become a city organizing its (indiscernible). So the -- I -- I would say the legislature by inaction did not necessarily violate even the spirit of the constitution of this article. And as I've -- as I've said before, to me, a very important element of the -- of Article X -- is the initial phrase, "The purpose of this article is maximum local self-government." And I -- and I would -- and then the next phrase or next -- yeah. I guess that's part of Section 1; it calls for liberal interpretation.

MR. MITCHELL: Right.

MR. FISCHER: So given those two, you might justify the Fergus and Sackett approach saying, "Okay. We're -- we're interpreting the concept liberally that these people who exercise old self-government, this is how they want to run their affairs, and we'll interpret the constitution provisions liberally."

MR. MITCHELL: Okay. So -- so -- so then the legislature not having a -- a top down -- out --

MR. FISCHER: (Indiscernible.)

MR. MITCHELL: Well, anyway, so I guess where I was at when I -- when I flipped the tape is that -- so -- so there really wasn't anything in terms of vision that you guys had in the local

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government committee. And didn't the legislature by the earlier 1980s not really having a strong preference that -- that's -- that lack of strong preference is -- was not necessarily violating in the spirit of the Article X as you guys --

MR. FISCHER: That -- that's what I would say.

MR. MITCHELL: Okay. Okay. So then I guess the only thing left is whether or not you think there is anything relevant with respect to the proceedings of the constitutional convention in your work that the local government committee, and the present sovereignty commotion, that you think, particularly if we drop this tape out with the Fisher papers at the university, that someday might want to listen to in 20 years. Do you think that we haven't talked about that you think would be --

MR. FISCHER: Well, skipping the last acts of irrelevancy. What -- what I've been basically tossing around in my head is the concept of the maximum self-government and liberal interpretation. And whether we cannot essentially find a means 40 years after the constitutional (indiscernible) type of essentially giving state status to tribal councils. To -- as local self-governing units, without requiring them to -- to come into the straight jacket of state general law. It -- one of the home rule provisions of Article X says that home rule can be extended to other classes of cities and boroughs of cities. I don't remember exactly but sort of one can extend home rule. And, you know, conceivably, the -- the one -- one could by stretching a little bit -- say, any community in Alaska that is organized as a city, as a tribal government, as anything, can -- is hereby considered a 12th class city and can exercise -- can function under home rule. Its own home rule charter where it's called a tribal charter or whatever. And will be recognized by the State as being a -- an instrument for purposes of such and such and such and such. And instrumentality of the state (indiscernible) and whatever. And I'm -- I'm not sure that our courts are ready to be quite that liberal in their -- in their interpretation of the constitution, but just sort of as a federal constitution has been interpreted to authorize the federal government. And the federal policy we had today and the way totally, beyond any conception of so-called (indiscernible), the same way I would hope the Alaska Constitution can be flexible and encompass solution to (indiscernible) problems.

MR. MITCHELL: Well, without spinning off and delaying you from picking up your daughter, I think that's a terrific idea. The problem is maybe --

MR. FISCHER: Lawyers.

MR. MITCHELL: No. It may be too late. And that is that, you know, what I -- you know, I think there's going to be -- my personal view is that there's going to be -- if in fact the Supreme Court stops on -- on sort of the sovereignty ideology, it's going to be very interesting -- purview window of opportunity as to what is everybody going to do next? And if -- and I hear two -- two things. One is the reasons that we want tribal governments is because, under the state system, there's all these things that we can't do. And obviously if you can create a village home rule government, like, for example, alcohol, and all kinds of stuff. But if -- if you created a home rule class of



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those governments, in theory, that would not be under paying out of all those arguments. On the other hand, the basis of tribalism is the only people who get to play the game are members of the tribe, and obviously, for the -- under years (indiscernible) articulate, for the Alaska Legislature to say that in Toksook Bay, Alaska, if there are 15 Gussik state citizens who are married into the community. And they're not members of the Toksook tribe, but we're going to bless the Toksook tribe as a home rule municipal village government. And these people could go screw themselves on election day. That's obviously not a -- a situation that I would suspect that our legislature, knowing what a great bunch of sensitive people they are (indiscernible) in life, whatever (indiscernible) caught. So I think you probably could have -- I think you're right. That's a great idea. But I don't know in this political climate --

MR. FISCHER: Yeah I --

MR. MITCHELL: -- how you could do it.

MR. FISCHER: -- I'm -- I'm not optimistic that you could do it. I just think, you know, there's a kernel there somewhere, and I would love to see Article X used in some kind of constructive way. I don't -- I don't know the answer to that.

MR. MITCHELL: Well, you could also amend article -- you know, if the government wanted to say if Article X doesn't presently provide for this, let's have an amendment to Article X because I love rural Alaska.

MR. FISCHER: Yeah, but you see that doesn't solve the problem of the Gussiks.

MR. MITCHELL: Right. Right. But I'm saying there's two -- you were saying -- first off all that you're raising the question -- first of all whether -- does -- does Article X presently, as it's not configured, allow the legislature to create home rule villages? And I was saying that we could fix that --

MR. FISCHER: Yeah. Yeah.

MR. MITCHELL: -- with a constitutional amendment. Whether or not -- and then I was -- it was my observation that ideology in the politics in Native Alaska have -- have said that that's no longer acceptable.

MR. FISCHER: Yeah.

MR. MITCHELL: Because that would have to mean that they're no longer an Indian tribe, that they're a home rule municipal government, and that would be an (indiscernible). And it wouldn't have been an (indiscernible) in 19- --

MR. FISCHER: Certainly not in '55, '56.

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MR. MITCHELL: Right. And it's interesting you guys didn't want to put any kind of top-to-bottom deal, but, you know, Wayne Aspinall and Sue Jackson says that as a matter of law, you shall give the land inside the privilege of the village to the State and municipal government --

MR. FISCHER: Yeah.

MR. MITCHELL: -- or to the State and trust for future municipal government, and they -- they had no problem --

MR. FISCHER: Yeah.

MR. MITCHELL: -- handling that. Well, anyway, I guess we've probably talked this through and --

MR. FISCHER: Right.

MR. MITCHELL: -- I appreciate the time. And I guess we can turn this off. TRANSCRIBER'S CERTIFICATE I, Louisa Dennis, hereby certify that the foregoing pages numbered 1 through 24 are a true, accurate, and complete transcript of the proceedings transcribed by me from a copy of the electronic sound recording to the best of my knowledge and ability. IN WITNESS WHEREOF, I have subscribed my name this 17th day of January 2022.  
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LOUISA DENNIS My Commission Expires 1/18/2023