

Comments of James H. Morrow, Attorney for Montana Farm Bureau at its State Meeting, November 13, 1972.

REMARKS

Your Executive Secretary, Mr. Burger, requested of me to be on this program to discuss with you our legal position in regard to the new Constitution and to comment concerning groups active in support of the new Constitution during the election. He suggested that the effect of the new constitution on you be analyzed and what you as citizens and as members of the Farm Bureau might consider for the future and actions that you may wish to take.

1. Our legal position on the Constitutional Question was simply that the plain unambiguous reading of Section 8 of Article 19 of the existing State Constitution should be controlling: "... unless . . . approval by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect." The Secretary of the State of Montana at meeting of the State Board of Canvassers certified that there was 237,600 electors voting at the election. The count on the general issue of constitutional revision was 116,415 in favor and 113,883 against. Thus, there was not a majority of electors voting at the election who voted in favor - this would require  $1/2$  of  $237,600 + 1$  or 118,801.

A. The Supreme Court of Montana by a 3 to 2 decision held that only a simple majority voting on the issue was all that was required and thus upheld the Governor's proclamation that the Constitution had been adopted by the people of Montana.

It is to be noted that each of the other issues submitted at the same election did carry by a majority of those voting at the election:

For a bicameral (2 houses) Legislature	- 122,425	- no change from old
For allowing the people or the legislature to authorize gambling	- 119,382	
For the Death Penalty	- 147,023	- no change from old

2. I categorize the most active proponents in addition to the Con Con delegates as follows:

A. Cities of Great Falls and Missoula and Helena.

If the majority of the voters who cast ballots in favor of the general issue in the City of Great Falls or the City of Missoula were disregarded there would not even be a majority that voted in favor. Thus, if either of those cities had not been voting, then the rest of the people of Montana voted against the general issue. The affairs of the City of

Great Falls indicated a great pressure on all employees and bond holders to work for passage. The City of Missoula likewise had problems. The economics of annual and lengthy legislative sessions gave the Chamber of Commerce of Helena an important reason to support it.

#### B. Universities

All higher university units through its administrators and faculty took an active part in promoting the new constitution along with the leadership of NEA primarily because the property owning citizens no longer would have a control over taxes, bond issues, or various regulations.

#### C. Labor organizations and Farm Union

For some unknown reason the leadership of the AFL-CIO and the Farmers Union took an active stand in favor of the Constitution. The fact that Silver Bow County voted against it ought to be an eye-opener to that leadership. When government becomes all powerful, these organizations as well as your own can be destroyed.

#### D. Newspapers

Then the fact that the daily newspapers of Montana made the new Constitution a special project was an amazing development. They made it a burning issue. The editorials and all news items were heavily slanted to promote the project. Their activity was a brainwashing of major proportions. The briefs of proponents were featured, the briefs of opponents received little attention. Our Petitions for Re-hearing were filed with the Court containing some 30 pages of additional research. But there was a complete black-out of the basis for the re-hearing even though we provided a summary of the points. Only in your own paper, where you have a thorough newsman, even though an octogenarian, was the story properly carried. What is the great interest of these newspapers? What are the motives? Who are they? With the exception of 5 day a week newspapers at Hamilton and Dillon, there are no locally owned daily newspapers. They are owned by huge, out-of-state, corporate owned, financial giants in the newsfield, which have no regard for the dignity or character or local problems of the property owning people of Montana. All of the daily papers in Montana now act in concert. The steady stream of stories copyrighted from the New York Times printed in most of the Montana daily papers does cause a speculation that the Montana

daily papers are under the philosophical umbrella of the owners of the New York Times.

E. Attack by some Politicians and Newspapers on landowners.

Some Politicians relish attacking corporations and individuals that do business in Montana. Such blatherings command feature stories in the daily papers. Attack is made on people from out of state buying lands in Montana and that has become a new feature for the daily newspapers. Where else do they expect the owners to sell it if the local people won't buy it? To whom do they expect the old timers to sell their lands if it is not outside people desiring to move here. Our state is less than 25 years old - the early day pioneers began to take land about 100 years ago. Where did they come from? Ask the Indians. Do these brilliant, by their own nomenclature, newsmen and politicians advocate government ownership of lands. Presently they are advocating regulation of use to conform to the desires of whom? The People? What People? The new constitution has taken all power from the people who own the lands and has given those powers to the politicians - the legislature. The power to tax and the power to regulate gives the power to destroy. This nation became the greatest because of the strength and of the middle class property owner. Weaken them and then this nation will become subservient to other world powers without and within.

3. FARM BUREAU ACTION

You of the Farm Bureau, the largest farm organization in the nation, as landowners, farmers and ranchers do have the right to question the background of all the provisions in the so-called new constitution. There is no class of people that work as hard to make a living. You do your very best to provide for a stable government, to provide an economy by private enterprise. You did not hesitate to point out what was wrong with the new Constitution. You took that leadership. When the election was had and you found that a majority voting at the election did not vote for it, you proceeded in the lawful way of challenging the issue in the only court available - the Montana Supreme Court. It was this Court that just the year previous, at the request of the promoters of the new constitution held that different issues could be presented at one election and be put on one ballot. The ballot itself stated the requirement was that the proposed constitution receive a majority of the vote cast at the election

The legislature in providing for the submission to a vote stated the same requirement and so did the Con-Con advertising.

However, as citizens, you have to abide by a court decision. But you can challenge every bit of legislation that may be proposed under that constitution. It is a document under a cloud of a doubtful majority; its provisions are dividing the people; it will create more government, it will create more bureaucracy, it will levy more taxes.

You are first of all citizens of the United States and your primary loyalty is to the nation. You are mindful of the greatest philosophical speech ever prepared by an American citizen and which has been translated by every civilized nation that stated among other things: "that this government of the people, by the people, and for the people shall not perish from this earth." You are mindful that your forefathers brought forth upon this continent a new nation. You are as firm as your forefathers that it was and is necessary to have a written constitution, just as the barons compelled of the King on the pasture at Runnymede in the year 1215 to sign the document known as the Magna Carta. You believe that the fundamental philosophy of government in this nation was and is to protect the people from government. You are mindful of the Tenth Amendment of the United States that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively or to the people." The reference to "states" came about because of distrust of the early colonial states for any central government. But, part of our heritage did become involved in "a great war testing whether this nation or any other nation so conceived and so dedicated can long endure" - the Civil War which resulted in the 13th, 14th and 15th Amendments to the Constitution. The 14th Amendment struck down the powers of states as expressed in the 10th Amendment by providing among other things: ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Thus, any law passed by the Montana Legislature and approved by the Governor under the new constitution will have to pass the prohibitions of the 14th Amendment of the United States Constitution. The fact that

Montana's new Constitution has taken away many of the checks of citizens heretofore provided under the previous constitution and laws, will not in any way prevent you as citizens of the United States from challenging any such law. This can be done either in state courts or federal courts.

It quotes from the early Montana case which was not considered by the majority of our court and, of course, ignored by our daily press, of State ex rel Woods vs. Tooker, 15 Mont. 8; decided in 1894:

" . . . We can conceive of no greater danger to constitutional government, and to the rights and liberties of the people, than the doctrine which permits a loose, latitudinous, discretionary construction of the organic law. We are taught by the constitution itself that those who administer this government are divided into three co-ordinate departments each of these can only act within its own limited sphere, and they, respectively, are the servants of the sovereign power, the people. There is no power above the people. There is no discretionary power granted in the constitution for either of these departments, nor for all of them united, to exercise, a discretionary expansion and flexible power against its rigid limitations, even though such limitations were imposed by inadvertent jealousy. If abuse exists by reason of defects in the constitution, present or prospective, the true source of authority, the people, have the power, and doubtless the wisdom and patriotism, to correct them; and this, in the American idea, is the safe and only depository."

4. A NEW GOVERNMENT? What about the new model Constitution.

There are some new concepts contained in the new Constitution that are of great concern. The president of the Constitutional Convention was quoted by the daily press after the election to the effect that we are just beginning a new type of government. What does he mean? There is no point in belabor<sup>ing</sup> article by article the changes in the new constitution. But, when you get the time and opportunity re-read it and you will note that it now provides that the legislature "shall" "do certain things. As Senator Greff recently stated the word "shall" is mandatory and the legislature will be confronted with many of the delegates insisting on legislation implementing. But to look at some of the changes of philosophy, some of the new concepts are

1. A statement of "rights" over and beyond those stated in the U.S. Constitution and not previously contained in the Montana Constitution such as:

- a. Right to a clear and beautiful environment
- b. Right to pursue basic necessities
- c. Right to sue citizens who serve on local boards for injury to person or property

Other so-called "new" rights stated have always been protected by law.

How or in what manner a group of people in the state of Montana can give greater "rights" to its citizens than any other citizen of the United States is incredible. As a so-called model constitution, it is an arrogant document in assuming the power to "give" rights which are protected by the United States Constitution. But, is there a new concept that government "gives" rights to people?

2. (a) Property assessment and appraisals are placed at state level with detail left to legislature. What the county assessor will be doing is another mystery. The local control is gone.
  - (b) Local debt is left to legislature and state financial aid may be given to local government.
  - (c) State debt may be authorized by 2/3 vote of legislature or a majority of the people voting on the issue.
- There are no limit propositions.
- (d) Independent appeal procedure for taxpayers grievances. Who will be on the appeal board?

3. ON ENVIRONMENT AND NATURAL RESOURCES

1. Article IX, Section 1 provides:

"Protection and Improvement

- (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
- (2) The legislature shall provide for the administration and enforcement of this duty.
- (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources."

2. Section 2 provides:

"Reclamation

All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

3. Section 3 provides:

"Water Rights

- (1) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.
- (2) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records."

4. TWO BOARDS OF EDUCATION

(a) One for higher education with "full power, responsibility and authority."

(b) High taxes on farm lands to support city schools will result.

5. A new class of local self-government with all powers not prohibited by constitution or law can be created and in whatever form.

6. The legislature shall provide for a Department of Agriculture and enact laws and provide appropriation to protect, enhance, and develop all agriculture.

(b) Special levies may be made on livestock and commodities for disease control and indemnification, predator control, inspections, protection, research and promotion. Remember the Franklin adage: "When government shall tell you when to sow and when to reap, the people shall soon be hungry". Is not Russia a good example? Will this concept lead to State Control of commodity marketing, promotion and research?

7. Welfare assistance is to be placed with the state, rather than counties.

Amendments and changing of the constitution is made easier by initiative as well as by the legislative referendum:

Present limit of number of constitutional amendments is eliminated.

Initiative by 10% of Qualified electors to include at least 10% of the qualified electors in each of 2/3rds of the legislative districts (qualified electors determined by those voting for Governor)

Referendum - 2/3 of roll call vote of either house.

NOTE: The language of the new constitution has changed to voting on the issue rather than at the election. Even the Con-Con delegates recognized the distinction. The result will be easier changing - but why? And to what end? To provide more government? The danger of easy amending is to make it easier for minority groups to obtain a control of people under the constitution.

The next legislature will be confronted with some 2000 required bills, according to publicity emanating from Mr. Harris the executive secretary of the Con-Con delegation, to revise the laws of Montana to implement the mandatory provisions of the Constitution.

What organizations of citizens are going to work this legislation?  
What action is the ordinary citizen going to undertake? Who is going  
to put up the money to fight representative legislation?

One of the main benefits, means of progress, having something to  
lose. Will you continue the fight?

A new Constitution - for what?