

MEMO ON REVENUE AND FINANCE ARTICLE OF THE PROPOSED CONSTITUTION

**QUESTION:** Why did the Convention delete from the proposed Constitution that section of the old Constitution which placed a limit of two mills to be levied on property for State purposes?

**ANSWER:** Speaking generally, the Legislature has the right to impose three basic taxes, the property tax, the income tax, and the excise tax. Relative to the last two, income and excise, which is actually a sales tax, there are no restrictions in either Constitution, new or old, of the amount of income tax that can be levied or the amount of sales tax which can be levied. Elimination of the two mill limit puts the property tax then in the same status as the other two sources of revenue. This, however, is not the reason the two mill limit was removed. It was removed for reasons of tax equality involving taxes to support the school system. Courts in other states have decided under the equal opportunity clause of the XIV Amendment of the United States Constitution each state is required to provide an equal educational opportunity for each child in the State. I have no question that these Courts decisions are right in interpreting the U.S. Constitution. The Courts have said that it is not equal educational opportunity when one school district must levy 30 mills to spend \$600.00 per student and another school district levies only three mills to spend \$1500.00 per student and that one of the criteria of an equal education should be similar amounts spent per student and in those districts which have to levy a large number of mills to educate their children there is naturally going to be a tendency to not vote adequate millage. In as much as it is the State's responsibility to provide the equal educational opportunity to each child, the State will probably have to levy an equal state-wide tax to finance all schools. With the two mill limit, our legislature now would only have the right to increase the income tax or put on a general sales tax, or both. Presently approximately \$90,000,000.00 of money spent for schools in Montana is raised by local property tax levies. If this had to be raised on a state-wide basis it would require approximately 95 to 100 mills, which would be imposed on the state level but there would not be any local levies for schools. However, if the two mill limit is left in, this money could not be raised by a state-wide property tax levy, but would have to be raised by an income tax, which would be about 2 1/2 times what we are now raising by the income tax, or roughly an eight % sales tax, or a combination of the two. If schools are totally supported by income tax or sales tax, a great tax inequity would arise. Generally, 2/3 of our property taxes now are for schools. This would give some taxpayers, such as transportation companies, a 2/3 reduction in their taxes. Most of these companies aren't paying any corporate license taxes, except the minimum of \$50.00. They would receive a great tax break if all schools had to be supported by the income or the sales tax. We have left it up to the State Legislature to decide how they will raise the school taxes.

I have heard some criticism that under the new Constitution the Legislature might balance their budget by levying a property tax. This is nothing new. They have done it approximately for the last ten years by property taxes anyway. How have they done it? They haven't raised the state's share of the school foundation program which is paid by the State to each School District and in some years they have shorted their share of the foundation program by over 20% and they have done this in order to

balance their budget. When this happens, when they fall short, that shortage that the state fails to provide to the foundation program, has been made up by local property taxes. Local government has had to raise the local mill levies to finance the state's deficiency. The new Constitution provides such responsibility to be the legislature's. That's where it belongs.

**QUESTION:** Why does the proposed Constitution provide that the State shall assess, appraise, and equalize values of property for tax purposes?

**ANSWER:** Over ten years after the enactment of the Classification Law, there are still counties in Montana which have not equalized their property values with the rest of the state. The primary responsibility for the assessment and appraisal of property is with the county with the State Board of Equalization having general supervisory powers. This requires the State Board to bring a law suit against counties to equalize values if they refuse to do so. By keeping their valuations low they pay less because of the state-wide levies now imposed for the university system, and they receive more money back than they would otherwise from the School Foundation Program. When *Serrano vs Priest*, noted above, is put into effect, these discrepancies are ballooned, the less your valuation, the more state money you will receive to support all of your educational system. Equity required a change be made but *Serrano vs Priest* made it imperative. By making the state responsible, the state, through whichever administrative agency the Legislature wants it to be done, has the primary function of valuation.

Because the state would have the function of valuation, a separate, independent appeal procedure was provided for. Presently, the same administrative person or body, who sets or supervises the valuations in the first place, also sits in judgement on appeals, which is wrong. The new Constitution requires that a local appeal procedure be made for any valuations set by the State agency. If the legislature in setting up the facilities to appraise the property and the appeal procedure uses local officials it will not add much to the cost. There is no reason the legislature can't designate the County Assessor as its local agent for the appraisal of property. There is also no reason the Board of County Commissioners couldn't be set up as the local appeal board as they are now, but if they had this assignment they could not have anything to do with the original appraisal.

**QUESTION:** The new Constitution eliminates the requirement that any tax on minerals must be by net proceeds tax. Why was this done?

**ANSWER:** The old Constitution required that you could not levy a property tax against minerals in the ground or in place. The only way you could levy a property tax on them was after they were brought to the surface and extracted - then a net proceeds tax would be levied in lieu of the property tax. The net proceeds tax would apply the millage against the value of the minerals on the surface, after deducting therefrom the direct costs of extracting those minerals. Minerals could also be taxed by a gross proceeds method which is also being done at the present time but that money goes into the state treasury. The net proceeds tax goes into the county treasury. In 1970, 39 counties received net proceeds taxes on a valuation of approximately \$90,000,000.00 of minerals. It has been said that these counties by the passage of the new constitution, which does not require a net proceeds tax on minerals, could lose these taxes, and have the taxes paid directly to the state through a gross tax. This is just a great big smoke screen because the legislature can also do it now under the old

constitution. Minerals, as they are brought to the surface, are classified at the 100% of their value under the classification statute. The legislature can change the value of the minerals from the 100% classification down to 1%. When this happens and you applied the millage against that value, it is in essence practically a 100% reduction of the taxes payable to the counties. The Anaconda Company wanted to keep this Section in the Constitution. Some of the oil companies wanted to keep it as it is and some oil companies wanted to leave it out. We removed it to give the discretion to the legislature as to how they wanted to tax minerals, in place, by net proceeds, or by gross proceeds, or by a combination of the three. There is something to be said for taxes on minerals in place from an economic development point of view.

If mineral lessees decide that they will hold the leases on the minerals situated in this state and go produce the minerals in another state, the legislature of Montana under the new constitution can tax those minerals in place and not allow them to keep them in Reserve without paying something to the state.

None of us like any type of taxes. Any taxes that are levied we would like to have fair and equitable. Since taxes, and the effect of taxes, are really a complicated matter and change with the times, this should be left to the legislature for the legislature has the proper background to devise the tax structure of the state. If the people don't like it they should vote out the legislative members that enacted the system, but it would be presumptuous for a Constitutional Convention to limit the authority of the legislature as to how to arrive at a fair and equitable tax picture for the state. We just don't know what the situation will be ten to twenty years from now (or even one year from now because of court decisions).

One of the farmer-rancher members of our committee stated, "What the Revenue and Finance Article does is unlock the gates of the ranch. It doesn't open them but it takes the padlock off, and everybody knows you can't efficiently operate a ranch without some gates that can be opened."

#### ANTI-DIVERSION AMENDMENTS

The theory of Anti-Diversion Amendments is that taxes derived from highway use should go to the support of highways. There is some opposition to this theory which contends that the legislature (as the responsible branch) should have the right to decide how tax revenues are to be spent without any restrictions from the constitution. The reason these Anti-Diversion Amendments are put into a constitution is that state legislatures at times, in order to balance the budget, do use taxes derived from highway use for other purposes. The theory of non diversion carried to its natural conclusion would bring you to the conclusion that taxes on beer and alcohol should be used for the rehabilitation of the alcoholic and his family, and on tax of cigarettes for cancer and heart disease.

Both the present and the proposed constitutions have anti-diversion clauses. Here are the differences.

1. The proposed section is much more readable and understandable than ~~the present section.~~
2. There is no mention in the new section as to the registration, operation, or use of vehicles on public highways. This was done specifically to allow the legislature in its discretion to tax motor vehicles by a registration tax in lieu of a property tax. Under the present constitution if this was done the tax monies would have to go to the highway fund. Under the proposed constitution, a flat registration tax can be

levied and can go to the counties, school districts, and so forth, in lieu of the property tax. The purpose of this is that cars and motor vehicles are very mobile and are used all over the state. Because of that mobility supporters contend there is no reason why the property tax should be large or small, depending on the school district in which the owner ostensibly resides. The removal of this language from the old section does not mean it would automatically be done that way but it does give the legislature the right to do it that way. This was supported by the auto dealers association.

3. Also left out was the word excise as it was used in the old section. This wording required that the new car sales tax be put into the highway fund. Actually, the new car sales tax was enacted in lieu of the property tax for the first year but has not gone to the local governing districts as a property tax. The omission of the word excise allows the legislature to allocate the first year sales tax as a property tax as originally intended.

4. New section 6 also allows this money to be used for highway safety purposes - essentially the Highway Patrol, and for drivers education costs and tourist promotion.

5. The last is a major change providing that revenue from highway sources may be diverted for other purposes by a 3/5 vote of the members of each house. Thus in a 100 member House 60 must vote to divert regardless of the members actually present. This allows the legislature some control over the highway department. Many persons testified to the unresponsiveness and bureaucracy of the highway department and the need to make them responsible to the legislature. The powerful highway users lobby should keep the legislature responsible so that these funds will not be recklessly diverted.

6. State highway tax money amounts to over 35 million a year, about half of which is needed to match federal aid programs. There is little chance of losing federal aid for the lack of matching funds.

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