

Billings Lawyer

Bill of Rights Reviewed



Gerald Neely

The writer will have a very difficult time deciding whether the good points outweigh the bad points of the proposed constitution, declares Gerald Neely, a Billings lawyer.

Neely chaired a large portion of the Commission working on a United Front (U.F.) report, and has since compiled a booklet entitled "A Critical Look, Montana's New Constitution."

Why will the choice be difficult for the voter?

Neely gives the following reasons:

-The news media and the delegates to the convention "have a compelling tendency to discuss the weak points of the document."

-The public relations arm of the convention can't be relied upon to point out any imperfections.

-The voters will only have a copy of the new constitution about one month before voting.

Although Neely says he thinks the good points do outweigh the bad ones, this may only be true to his own mind.

Moreover, someone had to take the role of "devil's advocate" and introduce some debate, says Neely which he does throughout his booklet, a portion of which is briefly reviewed here.

Revolving Side Issues

The voters will vote on the proposed constitution and three special side issues.

It looks simple, says Neely, but it's not.

He explains if 100 people vote on the constitution, then 25 people vote on the amendments to have it incorporated into the new constitution.

But, he points out, if 100 people vote on the constitution and only 20 cast their ballots on amendments, with 20 for it and 20 against it, amendments cannot be included in the constitution.

In other words, if you don't vote on the three side issues you are casting a ballot for what is in the new constitution.

Citizens' Status Considered

Neely goes on to point out something very unusual for the new Bill of Rights.

This is that the section "directs delegates to the status of the citizens."

He says the provisions in the current constitution give the rights of citizens in relation to government but the new constitution goes much further.

For example, in the section discussing inalienable rights, the last sentence reads: "In enjoying these rights, all persons accept corresponding responsibilities."

Other Major Changes

Other major changes and their implications in the Bill of Rights are given by Neely as follows:

-If the death penalty is eliminated on a special side issue, bail for all citizens, including minors, will be allowed.

-Especially can't have all civil and political rights restored after termination of state secession.

-The right to a writ of habeas corpus can never be suspended. Under the old constitution it could be suspended in cases of rebellion or invasion. (A writ of habeas corpus is the right to sue the lawfulness of a person's being detained.)

-An individual's privacy is not to be intruded without the showing of a compelling state interest.

Adult Rights

-Persons 18 years and over are adults and have the rights that all others have "unless specifically prohibited by laws which enhance the protection of such persons."

This provision will have an effect in the area of public office, criminal law and school segregation, says Neely.

Eighteen-year-olds can't sue for governor and certain officers which require a person to be at least 25 but they can sue the Supreme Court justice or district court judge if they have practiced law for 2 years in Montana. They can also sue for other officers.

Many current school regulations concerning dress codes, bus length, and the freedom to publish critical opinions of school administration would be unconstitutional unless state specific legislation is passed later.

Neely who also presides at present may feel that the laws have changed since they are now to be treated as adults.

-A defendant can waive a jury trial in felony cases.

-But it takes an unanimous verdict to convict in a misdemeanor case. It used to take a two-thirds jury verdict.

State Can Be Sued

-Lawsuits are now possible against the state, cities, towns, and other government entities. This also means government will have to carry insurance for virtually every government activity.

-Government agencies are to give the citizen the opportunity to participate in their operations prior to the final decision.

-Citizens will have the right to know which includes the right to examine documents and to obtain the dissemination of public bodies if individual privacy doesn't exceed the merit of public disclosure.

Perhaps the legislature can strengthen the section, suggests Neely.

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by placing the burden of proof on an agency withholding information and providing that officers responsible for improper withholding and noncompliance be punished for contempt.

New Inalienable Rights

—New inalienable rights are added such as "the right to (1) a clean and beautiful environment, (2) pursue life's basic necessities, (3) seek health.

Does this mean that all such necessities of life and health are to be provided by the public treasury?" asks Neely.

"The provision is clearly aimed at elevating public assistance benefits from the level of privilege to that of right," says Neely.

—The new discrimination provision says the state, a person, corporation, union or any institution cannot discriminate against a person on the basis of (1) race; (2) color; (3) sex; (4) culture; (5) social origin; (6) social condition; (7) political ideas; (8) or religious ideas.

Neely says this goes far beyond current state or federal laws in the types of discrimination involved and to whom it applies.

The U.S. Bill of Rights only applies to discrimination by the government on the basis of race, creed, or color.

Federal civil rights acts, with some reasonable exceptions, prohibit private discrimination based on race, creed, color, sex, or national origin.

Discrimination Prohibitions

Neely points out some of the most interesting ramifications which come to mind as a result of the new discrimination section in the proposed constitution.

1. A Jaycee Club could not bar women, nor could the YWCA bar men.

2. A landlord could not refuse to rent to someone because he wears a coat and a narrow tie, nor could a person selling property refuse to sell to a Republican, assuming that of these were the prevailing mores.

3. A Young Republican Club could not bar Young Democrats from running for their presidency.

4. A Catholic college could not refuse to hire a Mormon for its presidency solely because of religion.

This review of Neely's discussion on the Bill of Rights is only a part of his booklet which is highly recommended for anyone in getting valuable insight into the new constitution.

He has spent hours of work and thought on a production that he has much to offer.