



MONTANA CONSTITUTIONAL CONVENTION  
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

DOROTHY ECK  
District 11 Delegate  
Vice President, Western District

April 24, 1972

HELENA ADDRESS:  
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To: Delegates  
From: Voter Education Committee  
Re: Data on tax inequalities and school financing

Delegates are reporting that their most asked question is "What were the reasons for removal of the 2 mill limitation on state-wide property taxes." In response to your requests for data to answer these questions, here are some reports which might be useful.

Recent court decisions in California, Texas, and other states have ruled that the state must provide equal educational opportunity for each pupil regardless of the wealth of school districts. In *Serrano v. Priest*, S.Ct. Calif, Aug, 1971 a part of the decision read, "We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. . . We cannot agree that Baldwin Park residents care less about education than those in Beverly Hills solely because Baldwin Park spends less than \$600 per child while Beverly Hills spends over \$1,200."

The argument was that in Beverly Hills a tax rate of \$2.38 per \$100. in assessed valuation allowed a \$1,231.72 expenditure per pupil, while in West Covina a tax rate of \$5.24 was necessary for an expenditure of only \$621.26 per pupil. West Covina was putting forth twice the fiscal effort for half the yield.

Similar disparities clearly exist in Montana as measured by the taxable valuation per pupil enrolled in the school district. In Montana the lowest taxable valuation per pupil enrolled is \$57.00 while the highest is \$649,683. The average is \$24,521. This means that a 1 mill levy in the wealthiest school district will yield \$649.68 per pupil while in the poorest the same 1 mill levy would bring only 5½¢.

These are the extremes but in statistical analyses the Department of Public Instruction wealthy districts tend to spend more per pupil, to receive more state aid per pupil, to have lower mill levies, and to be in counties with lower tax levies than do poorer districts.

It has been suggested that some inequalities would be lessened by shifting the tax base to counties rather than school districts. However, the 1968-70 Report of the State Board of Equalization indicates that in terms of fiscal effort Powder River County levies 6.18 mills for support of elemen-

tary schools with a yield of \$201,844.00 while Mineral County levies 32.42 mills with a yield of only 110,011.00.

The next question is, "If a state-wide property tax is levied for the support of schools, could we count on an equitable valuation of property between counties?"

A state-wide property tax for school finance might do more to compel an equitable valuation of property than will proposed constitutional provision calling for state-wide equalization. Our present constitution clearly gives the Board of Equalization the power and duty to equalize valuations and yet Montana is ranked with Texas and New Hampshire as the three states with the greatest inconsistencies in taxable valuations between counties. (See Barber's Taxation and Finance, p. 52) Barber also points out that "Non uniformity of assessment is a violation of the Equal Protection Clause of the U.S. Constitution."

Those opposing the removal of the 2 mill levy do not frequently tie it to school financing..nor do they recognize the immediacy of court decisions as applicable to Montana.

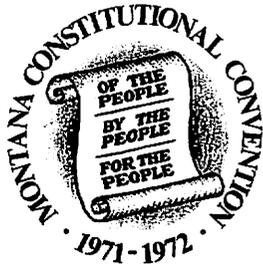
Bill Diehl in the February issue of Montana Taxpaper supports the thesis that costs in this state are already equalized through the foundation program. Others put forth the argument that quality education is not necessarily a factor of per pupil expenditure. There is also the suggestion that since state support now through the foundation program does not rest on property taxes at this time, it should find other tax sources to support increased expenditures for schools.

Two-thirds of the property taxes now levied go for education - most at the county and school district level. A state-wide property tax for schools would permit lower levies in most school districts.

We should have information on:

- ..court cases in Texas and elsewhere since *Serrano v. Priest*
- ..recommendations of the legislative council subcommittee on school finance...or preliminary findings

Quotes, comments, news stories, letters to the editor, etc. dealing with these issues (and others) should be sent to the state office.



**MONTANA CONSTITUTIONAL CONVENTION**  
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

April 25, 1972

To: All State Officials, Legislators, Candidates & Delegates

The Montana Constitutional Convention, through its Voter Education Committee, will sponsor a Seminar for State Officials, Legislators, Candidates and Delegates on Saturday, May 13, 1972. The Seminar will be in Helena and will include a no-host luncheon.

The delegates to the Convention have long sensed the necessity for dialogue with public officials and candidates. Many Committees were privileged to hear advice and suggestions from persons experienced in governmental matters. Still, partly because of the press of time and partly from an awkward reluctance on both sides, not enough interchange has occurred.

The document, of course, is written. But it is not too late to discuss it--to understand what the delegates intend, and to decide, based on such discussion, what you think of it.

We want to cordially urge your participation. We hope you'll come in the open spirit of free inquiry which we hope has become the hallmark of the Convention. Come to criticize, come to clarify, come to support or to oppose -- but come and talk about it! We hope we'll see you there.

Sincerely,

MONTANA CONSTITUTIONAL CONVENTION

*Dorothy Eck*

(Dorothy Eck) Citizens' Participation  
Subcommittee of The Voters Education  
Committee

CITIZENS' COMMITTEE FOR CONSTITUTIONAL IMPROVEMENT  
Box 1266  
Missoula, Montana

Dear Friend and Delegate:

As you know, the Montana Supreme Court has barred the use of convention funds for voter education in the June 6th election. We were shocked and dismayed by the decision.

The CITIZENS' COMMITTEE FOR CONSTITUTIONAL IMPROVEMENT has been formed to carry on the work of voter education. It is composed of the former members of the Voter Education Committee, and additional members may be added later on. It is now engaged in raising private funds. At the organizational meeting on April 28th, a total of \$2,740.00 was raised from Delegates Graybill, Toole, Bowman, Loendorf, Babcock, Payne, Harper, Martin, Burkhardt, and Dahood.

We have composed a tentative budget, which follows:

TELEVISION	
Telethon just before election	\$4,000.00
Spot series	3,000.00
RADIO	4,000.00
NEWSPAPERS	4,000.00
CITIZEN PARTICIPATION	1,000.00
MSU NEWSPAPER INSERT	3,000.00
FILM AND FILM CLIPS	4,000.00
SAGE ADVERTISING (TV production, newspaper layout, radio spots, slides)	2,450.00
PRINTING AND MAILING	500.00
OFFICE, STAFF, PHONE, ETC.	1,000.00
	<u>26,950.00</u>
TOTAL	\$26,950.00

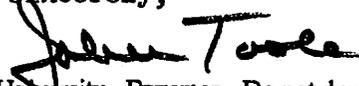
We will locate an office in Helena for a headquarters and probably staff it with one person. Needless to say, the Committee is contacting non-delegates for additional funds. Sub-committees will be formed, and the work carried forward.

But now the people of Montana need the same dedicated help from you which you gave so generously during the convention. The Committee is appealing to you now for financial assistance. Will you help? And will you ask your friends? And will you redouble your voter education efforts, in the face of what appears to be a concerted effort to defeat our new constitution?

Your checks should be mailed to the Reverend George Harper, our treasurer, P.O. Box 1080, Helena, Montana, and made payable to the Citizens' Committee for Constitutional Improvement.

I hope we can count on you, and your questions are welcome.

Sincerely,



Department of Agricultural Engineering  
College of Engineering

May 2, 1970

To Whom It May Concern:

Many people condemn the proposed Constitution because of subsection (3) which states that all water within the boundaries of the state are property of the state for use of its people.

The Supreme Court has held "the state of Montana has by necessary implication assumed to itself the ownership, sub modo, of the rivers and streams in the state." ref. Smith v. Denniff, 24 Mont. 20, 21-22, 60 Pac. 398(1900). \*

The appropriator derives his right from the state and not the national government. ref. Mettler v. Ames Realty Co., 7 61 Mont. 152, 168-169, 170, 201 Pac. 702(1921).

The U. S. Supreme Court has recognized this as legal fact in all Western States. Thus whether the proposed constitution is passed or not, the states are considered as the owners of the water. Anyone arguing differently is not informed of the true facts of water law.

Sincerely,



C. C. Bowman, Head  
Agricultural Engineering Dept.

CCB:lh

\* "... the state of Montana has by necessary implication assumed to itself the ownership, sub modo, of the rivers and streams of this state...." - sec. 1580 et seq of Civil Code grant right of appropriation  
+ appropriator derives his right from state, not nat'l govt, & use of water is subject to state regulation & control

ANALYSIS OF THE "COMPARISON OF THE EXISTING AND  
PROPOSED MONTANA CONSTITUTIONS" Distributed by  
The Citizen Clubs of Montana

An anonymous 17-page document entitled "Comparison of Existing and Proposed Montana Constitutions" is being circulated publicly, presumably to influence the June 6 election.

Because it contains serious errors and unfair criticisms, leading to a disapproval of the proposed Constitution, it is necessary in the public interest in a fair election to point out some of these things.

The entire document is written in a criticising and adverse vein, and makes little effort to be objective. However, this statement will ignore the general slanted approach, and refer only to specific items in the "Comparison."

1. Suffrage & Elections, Article IV -- page 2

- a. Poll booth registration -- the Legislature has always been able to provide for poll booth voting, while Paragraph 3 requires that in so doing the method used "shall insure the purity of elections and guard against abuses." This is a new safeguard.
- b. Taxpayer qualifications for bond issues -- the old provision, IX, 2, is void because of the decision by the Supreme Court of the United States in Phoenix v. Kolodzieski (1970), 399 U. S. 204, which held that non-taxpayers can vote in bond elections.
- c. Residence for voting purposes -- the old provisions, IX, 3 and 6, are ineffective, because the Supreme Court of the United States holds that state residence requirements for voting are void, in Dunn v. Blumstein, 31 L. Ed.2d 274.

2. Legislature, Article V -- page 3

- a. On page 3, the statement says the Legislature "must" meet each year for sixty days, and says this is the "most costly provision."

This is wrong. Paragraph 6 of the proposed Constitution states that the session shall be "not more than" sixty days. Thus, it can be less. With annual sessions and adequate interim staff and committee work, there would be no need for long sessions.

- b. As to budgets, annual budgets are more accurate than two-year projections, and this alone could save money.
- c. As to escalation of the tax burden from year to year, the existing constitution has certainly not prevented this, and there is no reason to expect it to do better in the future.

- d. Committee system is not eliminated, but is merely left in flexible form for the Legislature to regulate by its own rules.
- e. Prohibitions -- these are unnecessary statutory material that are not a part of the fundamental structure of government, and are therefore deleted.

3. Executive, Article VI - page 6

- a. Governor and Lt.-Governor, by teaming up in advance, avoid conflict and political rivalry, so that they can work more effectively.
- b. Banking and auditing - this is required through Article VIII, Paragraph 12, on strict accountability of all revenue received and money spent by all government. In other words, it is covered in another Article, and not omitted or disregarded.

4. Revenue and Finance, Article VIII - page 8

- a. State and County Boards of Equalization are not "abolished". This is wrong. The Boards are omitted from the Constitution, so the Legislature can change their duties if needed in the future.
- b. Assessment -- equalized assessment is required, by whatever system is used, and this is what the old system did not do. The Legislature is free to use county assessors in its new system.
- c. Debt and levy limits -- on pages 9, 10, and 11, are imaginary possibilities described in scare words. Neither the Governor nor the Legislature is likely to be that irresponsible.

The power to control taxation lies with the people, who do not need artificial and rigid limits to discipline themselves. The old debt limit of \$100,000 may have been workable in 1889, perhaps, but is certainly obsolete now.

Present and future changes in government spending at all levels make a flexible tax system necessary.

- d. Highway gas tax diversion -- it is stated that diversion of the gas tax would "upset the 90% matching funds received for highways from the federal government." This is a gross exaggeration very cleverly used.

The truth is that the gas tax produces in one year over \$35 million, and the maximum that has been used to obtain matching federal funds is about half of that sum. While it is hypothetically possible for the Legislature by three-fifths vote to divert more than half the gas tax funds for "social needs," as suggested, no Legislature

- e. State aid to local government -- flexibility for future revenue sharing between federal, state and local tax sources is absolutely necessary, because no one now knows in just what form it may develop. Since the Constitution requires "equal protection" for all, the "subsidy" possibility on page 11 could not actually occur.

5. Water rights - Article IX, page 11

- a. Water rights are not "left up in the air." Existing rights are recognized and confirmed. Future rights are obtained by the same law we now have, and the right to appropriate them for beneficial use is assured. A "state agency" will have nothing to do with the right to future appropriation of water.

6. Education, Article X, page 12

- a. Kindergartens -- The proposed Constitution does not "open the door" to kindergartens in the public schools. It has always been open, for such school districts as may wish to support kindergarten classes.

7. Eight-hour day - Article XII, page 14

- a. 10-hour day -- flexibility to permit 4-day work weeks would be available. This is growing in popularity, and Montana should also be able to have it when the time comes.

8. Voting section by section - page 17

The proposed Constitution is a coordinated document, rearranged to be simple, readable, and in logical order. Much obsolete and unnecessary material has been omitted. There is no practical way to vote Article by Article on it, with the danger of having parts of the new and parts of the old all mixed up together. It would be like trying to put together part wagon and part automobile and expecting it to work.

These comments are submitted in the hope that they will be helpful to the people who have received the "Comparison." Constitution subject matter is not clear and easy for anyone. Sound criticism of the proposed Constitution is both helpful and healthy, as it aids the voter to decide for himself whether the new is better than the old. Unsound and misleading criticism is just the opposite, and harms the fair working of the political process. I hope by these statements to remedy some of that harm.

May 12, 1972.

Respectfully,

J. C. Garlington  
Delegate to Constitutional Convention  
District 18, Missoula, Montana.

MONTANA CONSTITUTIONAL CONVENTION  
SEMINAR FOR STATE OFFICIALS, LEGISLATORS, & CANDIDATES

The Capitol - Helena, Montana  
Saturday, May 13, 1972

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P R O G R A M

- 9:15 A.M. Convene in House Chambers: Welcome
- I. Officer Orientation (45 Min.)
- Leo Graybill, Jr.: What does the Constitution mean?  
John Toole : What did the Convention do?  
Dorothy Eck : How should the Public react?  
Bruce Brown :  
Jean Bowman : What happens if it passes?
- 10:00 A.M. II. Discussion of the Proposed Constitution:
- A dialogue between delegates and invited guests concerning any Article or matter relating to the Document (except the Legislative Articles).
- 11:30 A.M. Recess for No-Host Luncheon - Location to be announced.  
Luncheon Speaker: Marge Brown
- 1:30 P.M. Convene for Afternoon Session:
- III. Orientation:
- Jim Garlington :  
Archie Wilson :  
Mae Nan Robinson : Delegate Viewpoints (15 Min.)  
Charles Mahoney :
- 2:30 P.M. IV. Discussion of the Legislative Articles:
- A summary of the unicameral and bicameral Articles and dialogue about them among Legislators, delegates and others.
- 4:00 P.M. V. General Discussion:
- Leo Graybill, Jr.: Closing Remarks

May 13, 1972

I believe that your willingness to consider history when the present is so pressing -- surely testifies to your breadth of view.

History has much to say to us in this pressing present, and these brief remarks will not cover new ground, but may, perhaps, provide part of the perspective against which Montana's present constitutional efforts should be viewed.

The proposed Montana Constitution of 1972 is being submitted to Montana voters for their consideration as an alternative to the Constitution of 1889. That 1889 Constitution is obviously viewed in many ways, not the least among them, through that rosy light that attaches a reverence to any constitution in this constitution-based society.

History is unkind to that viewing. For it can be born out that the constitutions of the late nineteenth century, and Montana's is a highly typical example--were distortions of American constitutional concepts, that they were in fact new model constitutions that bore little resemblance to the documents in our tradition that may properly merit public reverence.

My own historical outlooks do not run to the conspiratorial view of either American or Montana history. I think that those constitutions written in the second half of the nineteenth century were the people's best efforts to cope with little understood developments in the nation: most particularly the growth of industry and the marketplace, the decline of a rural self-sufficiency, the gathering of people into towns and cities to conduct their affairs within single segments of the society as: labor or management; in the markets, as buyer or seller; in the professions, as practitioner or clientele.

I've cited this instance before, but reflective, I think, of certain doubts over the future shape of society was the resolution introduced by Cornelius Hedges into the Montana constitutional convention of 1884. The longtime territorial superintendent of schools proposed:

...a proper committee to engraft in the constitution... a provision to be enforced by appropriate legislation that every boy before reaching his majority shall have some useful trade, art, profession, or occupation whereby he can maintain himself and a family, and that every girl before reaching the age of 18 shall know how to cook, keep house and do plain sewing.

It must have been with tongue in cheek that a delegate suggested referral to a Committee on Internal Improvements. Somewhat more gracefully, the resolution was relayed to a select committee of three and failed to reach engrossment.

It was the rise of industry (technological development to use our phrase) that redirected constitutional developments in the states as early as the 1840s and 1850s. The self-sufficient American of the day had not been averse to seeking favors from state government and he received them--in a mystifying array of special and local laws: gaining a railway, turnpike or canal franchise; receiving banking charters in individualized acts; securing outright underwriting of railroad and streetcar ventures from state legislatures and municipal governments. A variety of special privileges were sought by diverse and devious means, and they were given in a misguided generosity that might have made some men rich, but which brought state legislatures into an intense disrepute.

One of the ironies of American history must surely be that because relatively smallscale private enterprise found that it could tap public resources and aids so handily in the early nineteenth century, governmental machinery, particularly the legislature, became so constitutionally restricted and circumscribed that its abilities to serve the public sector or adequately referee a vastly changed private sector were curbed for a full century forward.

Partly because state constitutional history in America began its life so close in time to memories of conflict with royal governors, those first state legislatures were easily accorded the position of the most powerful agency in our public life. In time, the executive was strengthened by such devices as the veto, an augmented power of appointment as administrative machinery expanded, and by the expectation that a full-time public servant representing all of the people should take positive steps in proposing state policy. The judiciary knew its own style of growth, a growth marked always by the multiplication of judges and courts as the population grew and dispersed. For a long period of time, the courts tended to depreciate the importance of the statutory law that the legislatures were evolving, preferring instead the more familiar system of judge-made law. But the steady growth of state codes became a fact of American life, and correspondingly there was little reluctance upon the part of the courts to find most of that statutory law subject to review.

Those early state constitutions, as we know, kept the original character of American constitutions: fixing a basic frame of government, allocating power among major agencies, and stating certain general limitations on official power. State constitutions proceeded from the premise that state legislatures inherited intact the general powers of government and hence possessed all governmental powers that were not expressly denied.

Not many express denials appeared in the early constitutions. Then after 1830, new constitutions began filling up with both an increasing amount of specific legislation---in one sense, denials in themselves of legislative action---and with an increasing number of procedural and substantive restrictions upon the legislature. Evident were convention attempts to deal for all time with the problems of the hour. After 1840, banking was singled out as a particular economic interest to regulate by fundamental law; then as the railroads grew in scope and power, they became key objects of constitutional attention. But central to the development of state government in this country were the restrictions placed upon the legislature---restrictions which are not possible to evaluate apart from the situations that produced them.

Turn from the general to the specific.

Turn to Illinois in 1870, a state where a constitutional convention was in session, meeting to correct the problems of lobbying abuse, overextended municipal finance, and to respond to pressures to regulate the unbridled powers of banks and railroads. An unsuccessful 1862 convention had paved the way in devising a document that might be better suited to a state that was becoming heavily populated and increasingly industrialized. Notably, in 1869 the Illinois legislature had passed 1,188 private bills and only 385 public laws.

Consider Pennsylvania in 1873, a state whose combination of coal and iron resources meant that it had become the nation's industrial and manufacturing leader, second in population and first in steel in 1870, a leader in spinning out miles of turnpike, home of the powerful Pennsylvania railroad, scene of manipulative political rings that dominated affairs at the state capitol. A year before, the Pennsylvania legislature had passed 1,232 private bills and 54 public laws.

The cure chosen, in both Illinois and Pennsylvania, in constitutional terms was the detailed prohibition of local and special bills, and the precise detailing of legislature procedures, attempts to write a code of corporate practice into fundamental law, and placement of the raising, disposition and management of public revenue almost beyond the reach of the legislature.

The rationale for the curbs was that constitutional restrictions would restore confidence in the legislature, elevate its character, end subservience to special interests. The method was simply to rid the legislature of the power to do evil as far as possible.

All of which might have been well and good, had not the time been fast coming (if indeed it were not already in the present of the 1870s) when those curbed legislatures would be called upon to act positively for the public good. But for the moment, the wellworn philosophy prevailed: organized society's main job still

appeared to be to punish and control bad men so that good men could move freely to better themselves.

The developments in Pennsylvania and Illinois in the 1850s and 1860s and the constitutional response made in those states in the early 1870s have more than an academic, conjectured relationship to where we stand today. There is a direct line of descent to our present position, and it can be traced.

A pattern of constitutional descent was suggested in the abortive Montana constitutional convention of 1866: that whirlwind if irregular gathering summoned by Acting Governor Thomas F. Meagher. It produced a proposed constitution in less than a calendar week! And there is more than a hint of vest pocket research facilities. From press reports it's inescapable that someone had a copy of the Nevada constitution and the proposed Colorado constitution of 1865 and that textual borrowing was freely and hurriedly engaged in, with the greatest debt owed the Colorado framers, who were themselves still thwarted in statehood attempts. Had that early effort by Montana Territory to become a state succeeded, we might have had a constitution better resembling fundamental law than has been our situation. For in 1865 the Colorado framers depended heavily on the Kansas Constitution of 1859, which was one third as long as the present Montana constitution, and encumbered by far fewer legislative and fiscal restrictions.

One picks up the main strands of Montana constitutional history with the conventions of 1884 and 1889. The 1884 convention had some irregular characteristics of its own: chiefly because Montanans had grown impatient waiting for Congress to invite them into the Union by passing appropriate enabling legislation, and to fill the gap, your predecessors passed it themselves, in the thirteenth session of the Montana territorial legislature. Except for that beginning, the convention of 1884 followed regular lines: its 45 delegates deliberated purposefully for 27 days, dividing into 22 standing committees and adopting orderly rules. It's instructive to note that within four days of their formation, those standing committees began reporting in proposed constitutional sections to be debated by the committee of the whole and ultimately adopted by the convention.

The proposed constitution of 1884 was submitted to Montana voters in the general election that November and approved by a vote of 15,500 (figures rounded) to 4,300. A select committee was named by the convention to present the 1884 constitution to Congress and to pray admission. It was a prayer that went unanswered, of course, for another five years.

For a brief period in 1888-89, there was strong possibility that Congress might admit Montana under the 1884 constitution, but eventually, the long wait for statehood was rewarded by passage in 1889 of the Omnibus Act which invited North Dakota, Montana and Washington to meet in conventions that summer to frame constitutions

as the essential step in admission and which asked South Dakota to reapprove a constitution drafted at Sioux Falls in 1885.

As is well known, 75 delegates met in Helena amidst the full patriotic trappings of July 4, 1889, to again draw a Montana constitution. Their model was the 1884 document, referred to time and again, as the "old" constitution. With few exceptions the rules of the earlier convention held; William Andrews Clark stepped into his second convention presidency, and six of the 23 standing committees were headed by veterans of the convention of 1884.

As ninety percent of the 1884 constitutional text was carried over, some significant changes were made. There was an increase in the length of legislative sessions from 40 to 60 days and of executive terms from two to four years. Second thoughts produced an increased allowable property tax mill levy and additional detail on the management of public monies appeared. There was an increase in judicial districts and an abolition of county probate courts. There was provision for more careful management of school lands and for more difficult methods of constitutional revision. There were minor extensions of political rights to women, a curbing of an 1884 legislative authority to grant additional property tax exemptions, and replacement of a Bureau of Industrial Resources created in 1884 by a Bureau of Agriculture, Labor and Industry.

An early study of the Montana constitution of 1889 made by Elbert Allen traced its text to the constitutions of other states, and found that there was a very direct line of descent from the Colorado constitution of 1876, with evidence also of borrowing from other states, especially California.

The notion of a western stamp on the 1889 constitution has always seemed well and good to us. Obviously Colorado and Montana had much in common and a shared constitutional background was also supportive of the view that men came out of the East, left its trappings behind, and built new and happier societies in the American West.

But Colorado's historians disturb that theory by carefully showing that the fundamental law in that state with such exceptions as mines tax exemption and water law emerged not so much from mining and stockraising and frontier roots as from large transplantation from the constitutions of Illinois and Pennsylvania of 1870 and 1873.

I do not mean to imply that Montana's founding fathers were empty-headed men, devoid of constitutional principles of their own, ready and willing to adopt their texts without question. Nor was their performance singular. There has ever been a pattern of borrowing and a fair measure of uniformity in state constitutional development in this country. Further, one has only to look to the debates and the newspaper accounts of the conventions of 1884 and

1889 to know that there were many views and much discussion of some of the constitution's articles that were adopted. It is also readily apparent that many key sections---notably, the executive and legislative articles--were adopted with precious little debate or consideration.

It has always seemed crucial to bear in mind the distinction between the tasks of the conventions of the 1880s and the task of the Montana convention of 1971-72. The earlier work was a preliminary and essential step to statehood. By most, statehood was desired. There is ample evidence that many convention arguments were terminated by the caution that departure from accepted practice might endanger the adoption of the constitution and delay admission. The 1884 constitution had been approved by the people, and time and again in 1889, its success at the polls was cited as reason enough to approve one of its sections.

Part of the Montana constitutional climate of 1884 and 1889 must have been influenced by territorial experience a quarter century in duration. Montanans had been frustrated for years by being sent appointed governors, secretaries, supreme court justices from afar, and by being accorded representation in Congress that was limited to a nonvoting delegate. The aspect of a plural elected executive and an elective Supreme Court whose bench was distinct from that of the district courts must have been welcome features of statehood--and of other state constitutions.

Although there were provisions for external controls, and Congress' limited size, length of session, and operating funds, the legislature had been the branch of government left most unfettered in the territorial period. True, the appointed governor had the veto power, but his veto could be overridden. True, there was always the specter of Congressional annulment, but annulment was the exception, not the rule. The exceptional had scarred Montana badly in 1866 when the work of two sessions was annulled. But for the most part, with observance of the relatively brief territorial organic act and pertinent Congressional legislation, the legislature had functioned in considerable freedom and from all accounts had performed its work well. A careful look at the evolution of the Montana codes must have given some indication in 1884 and 1889 of the rational development of Montana's management of her internal affairs.

Yet when it was time to become a state there is very little evidence that the constitutional article that shaped the new legislature was any kind of natural outgrowth from territorial experience.

Ratification in 1884 and 1889 was so colored by the issue of statehood that it is probably of limited applicability to these present days. A vote for the constitution was a vote for statehood; a no vote consequently was hard to cast. Some Montanans obviously did, and in 1884, the differing opinions followed east-west lines. The 1884 convention---against the advice of its best minds---

cemented in constitutional text the tax exemption of mines and mining properties--and those stockmen who were settling in eastern Montana thought that was undue economic favoritism. Symptomatic of response was the constitution's defeat in Dawson county, by a vote of roughly 379 to 34, and its victory in Silver Bow county, by a vote of 4,650 to 90.

There was not much attention paid to the proposed constitution in the Montana press in the months between February and November, 1884. Far more notice went to the fight for territorial delegate, a contest won by Joseph K. Toole. He had been a prime mover of the convention and chairman of the committee charged with informing the electorate about the new constitution. In those simpler times his committee asked and received authorization to obtain territorial funds for circulation of 10,000 copies of An Address to the People after the convention adjourned, for the obvious reason made clear by Toole, that his committee couldn't possibly do its work until adjournment.

There are some interesting sidelights in the ratification period of 1884. [A curse (or blessing) of newspaper research are all those other columns of interest.] I couldn't help noting the reports of the formation of the Montana Stockgrowers Association on one hand---looking to the future, and the creation of the Society of Montana Pioneers on the other, looking back at the past. One had to have been in Montana 20 winters to qualify for the latter organization--or have been here or on one's way when the territory was created in May, 1864. Several of the men of the 1884 convention were there, and one of them, James Fergus, senior delegate in 1884, was elected Pioneers president. One of the conclusions of the organization was that it was time to organize since the strange and exceptional environment which had made them responsible for order and good government in the absence of law had passed away. However, a week later, a stage was held up enroute from Jefferson to Boulder because it was thought two gentlemen were bound for court in Boulder and cronies came to their rescue. They weren't aboard, after all, but the press took some pleasure in pointing out that "several legal luminaries" from Helena were.

There were single-issue dissenters, then as now. A.M. Woolfolk of Helena, present at the 1866 convention, asserted that Montana was now not ripe for statehood. His main objection was the mines tax exemption and he asserted the constitution should be voted down. He wasn't so much concerned with inequity or constitutional niceties as he was with the fact that the exemption would work to keep mining lands in speculative hands for a longer period of time, and thereby delay settlement in the Helena area. This city showed some concern that the proposed constitution placed the capitol on wheels by providing machinery for an election to settle the question of the permanent state capitol, but by and large its future appeared rosy.

There was a nagging problem of sewage disposal, but it could

be solved, it was reasoned, by building one main sewer down Main street (there were none at the time) and letting sewerage travel by way of Chessman flume to Ten Mile Creek and on to the Missouri. There were continued rumblings about the shackles of territorial government--another carpet bagger--an Indianan had just been nominated associate justice of the Supreme Court of Montana and it was deemed unfair that there should be 75,000 people in the territory to make laws for themselves, and the prospect of a Hoosier to tell them what they had done. How long, oh Lord, how long, was the familiar cry.

The ratification period in 1889--a month and one-half in duration, was marked by a strong measure of constitutional support--the final vote was 26,950 to 2,274, but also colored by intensely contested partisan elections. The enabling act had stipulated that the Montanans could name state officials at the same time that they voted on ratification, and by ordinance, elect members of the anticipated first state legislature. That legislature would possess the right to name two fully accredited United States Senators, and the fight for its control was heated, partisan, and conducted amidst charges of bribery and fraud. Accuracy of returns from Silver Bow county were called into question. The first Assembly was unable to decide which Silver Bow legislators to accept and sat as two legislatures--one Republican and one Democratic, and little was accomplished except the sending of competing delegations to the Senate and adjournment.

Not long after the legislative impasse of 1889-1890, the framers of the Montana Constitutional Convention gathered together to resume their association in an organization that became the Society of the Framers of the Montana Constitution. Leading delegates were called upon in the next years to discuss individual articles of the constitution and assess the operation of state government under their terms.

Joseph K. Toole was by then first governor of the state and when asked to speak of the executive article at the first reunion in November, 1890, had to confess that he could only speak in the abstract since by reason of the failure of all legislation the winter before, not a bill, joint resolution, or memorial ever reached the Executive. Outstanding obligations totaled then \$170,000,000 and while there was cash to pay, none could be paid until authorized by law.

"My principal occupation," Toole mused, "has been the appointment of Notaries Public." The constitution did not limit the number of appointments, nor did he. They were numerous, more so than the militia, and if occasion required calling the latter, he was not sure but that it would be more expedient to call out the Notaries Public. Certainly so, unless the Legislature soon did something for the militia. W. W. Dixon could more fully report on the Judiciary in 1890 and W. A. Clark spoke briefly on "The Constitutional Convention and Our Society."

It may be remembered that Clark had been fairly presumptuous at the conclusion of the 1884 convention by bluntly asserting that the work of the convention would stand as the basis of government in Montana for all the untold generations to follow. I am happy to report to you that Clark's view had tempered by 1890, and a little more than a year after the deliberations of the convention of 1889, he observed that the rapid progress of the young state might soon demand a revision and enlargement of the Constitution. The provisions covering that contingency were wise and liberal. "As the generations come and go," said Clark in 1890, "developing rapidly successive changes and conditions, requiring new methods and additional powers and restraints, we may expect the genius and wisdom of our successors will eliminate, supplement and amend, ... [The Constitution]." - "But" -- said Clark -- "the prominent features of the Constitution would surely survive since they comprise the recognized, immutable and eternal principles which are essential to good government, the administration of justice, and the protection and perpetuation of the rights of men."

I suspect that the work of the Montana constitutional convention of 1971-72 has born out Clark's revised prophecy. Surely the prominent features of the Constitution have survived: the pattern of government, the principle of separation of powers, the basic allocation of responsibilities, of the familiar forms of state and local government. Surely the rights of man have been wisely protected, perpetuated and enlarged upon. Gone is much of the peripheral--unnecessary verbiage, many of the nineteenth century proscriptions of state government's ability to move in response to public needs. Central, it appears to this viewer, is the long delayed legislative reprieve and restoration of the legislature's rightful stature in a society that functions freely, and the establishment of openness and responsiveness as controlling agents.

I find few grounds for comparison of Montana's nineteenth century conventions and the recent convention insofar as are concerned such matters as citizen engagement, degree of preparation, public awareness, staff assistance, attention by the press and other news media, or the conscious coming-to-grips with the basic problems of how Montana might best provide for its agencies of government. The proposed constitution of 1972 has evolved from Montana's experience and has profited from a very different sort of constitutional consideration than its nineteenth century predecessors.

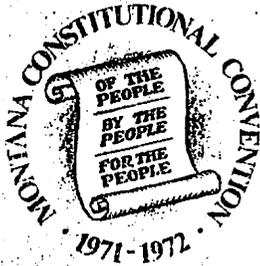
It's been a long course to the present. I date the acceleration of that course from the late 1950s, with the establishment of the legislative council and with a freeing of the press of Montana to turn throughout Montana to a more vigorous and informative task of reporting state and local government. After 1967, it was the Montana legislature that remained at the hub of the movement that brings us to the present time: in its assignment of a constitutional study to its legislative council in 1967, in its creation of revision and preparatory commissions, in its submission

of the question of calling a convention to the people, in its preparation of enabling legislation, in its provision of the leadership of present and former legislators in the revision movement. First, these legislative moves, and subsequently, the convention itself, were the points of coalescence for the various drives for constitutional reform that had grown out of the work of citizen groups concerned with improvements in the legislature, the courts, the executive branch, local government, and the conduct of public finance.

I find the basic and longheld hopes for a better fundamental law for state and local government in Montana more than well fulfilled by the proposed Montana constitution of 1972. I believe it merits the state's approval June 6. It merits that approval for the improved machinery of government that it outlines and for the enlarged protection of individual right that it provides. It merits that approval also, I most firmly believe, so that the considerable energies of hundreds of Montanans, centered so long on improved and clarified governmental structure and powers, can be turned with new purpose and promise to those tasks that we must undertake together. It merits that approval if community in Montana is ever to be brought into harmony with the quiet beauty of our state, the grandeur of our mountains and the vastness of our rolling plains.

MARGERY H. BROWN

(Address to the Montana Constitutional  
Convention Seminar)



**MONTANA CONSTITUTIONAL CONVENTION**  
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

JOHN H. TOOLE  
First Vice President

May 15, 1972

COMMITTEES  
Chairman  
Public Information  
Administration

Member  
Education &  
Public Lands

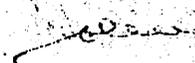
Dear Delegate,

This appeal is only addressed to those Delegates who have not as yet made a contribution to our voter education campaign or who have said - "here's some now and I'll give more later."

It is now "later" and we must have the funds within the next few days or our education program will not come off. Also, I know you have friends who will help. Contact them and impart to them the urgency I know you all feel. The officers of the Convention meet twice weekly in Helena. We simply don't have time to travel the state. We can only depend on the dedication of the Delegates to show the same selflessness, they showed during the Convention. We have raised \$9,080.00. We need \$26,000.00.

Please help the people of Montana make the most important decision of their lives. The address for your checks is c/o George Harper, Box 1080, Helena. Remember, the people are counting on us.

Sincerely,

  
John H. Toole  
First Vice President

An anonymous 17-page document entitled "Comparison of Existing and Proposed Montana Constitutions" is being circulated publicly, presumably to influence the June 6 election.

Because it contains serious errors and unfair criticisms, leading to a disapproval of the proposed Constitution, it is necessary in the public interest in a fair election to point out some of these things.

The entire document is written in a criticising and adverse vein, and makes little effort to be objective. However, this statement will ignore the general slanted approach, and refer only to specific items in the "Comparison."

1. Suffrage & Elections, Article IV -- page 2

- a. Poll booth registration -- the Legislature has always been able to provide for poll booth voting, while Paragraph 3 requires that in so doing the method used "shall insure the purity of elections and guard against abuses." This is a new safeguard.
- b. Taxpayer qualifications for bond issues -- the old provision, IX, 2, is void because of the decision by the Supreme Court of the United States in Phoenix v. Kolodzieski (1970), 399 U. S. 204, which held that non-taxpayers can vote in bond elections.
- c. Residence for voting purposes -- the old provisions, IX, 3 and 6, are ineffective, because the Supreme Court of the United States holds that state residence requirements for voting are void, in Dunn v. Blumstein, 31 L. Ed.2d 274.

2. Legislature, Article V -- page 3

- a. On page 3, the statement says the Legislature "must" meet each year for sixty days, and says this is the "most costly provision."

This is wrong. Paragraph 6 of the proposed Constitution states that the session shall be "not more than" sixty days. Thus, it can be less. With annual sessions and adequate interim staff and committee work, there would be no need for long sessions.

- b. As to budgets, annual budgets are more accurate than two-year projections, and this alone could save money.
- c. As to escalation of the tax burden from year to year, the existing constitution has certainly not prevented this, and there is no reason to expect it to do better in the future.

- d. Committee system is not eliminated, but is merely left in flexible form for the Legislature to regulate by its own rules.
- e. Prohibitions -- these are unnecessary statutory material that are not a part of the fundamental structure of government, and are therefore deleted.

3. Executive, Article VI - page 6

- a. Governor and Lt.-Governor, by teaming up in advance, avoid conflict and political rivalry, so that they can work more effectively.
- b. Banking and auditing - this is required through Article VIII, Paragraph 12, on strict accountability of all revenue received and money spent by all government. In other words, it is covered in another Article, and not omitted or disregarded.

..4. Revenue and Finance, Article VIII - page 8

- a. State and County Boards of Equalization are not "abolished". This is wrong. The Boards are omitted from the Constitution, so the Legislature can change their duties if needed in the future.
- b. Assessment -- equalized assessment is required, by whatever system is used, and this is what the old system did not do. The Legislature is free to use county assessors in its new system.
- c. Debt and levy limits -- on pages 9, 10, and 11, are imaginary possibilities described in scare words. Neither the Governor nor the Legislature is likely to be that irresponsible.

The power to control taxation lies with the people, who do not need artificial and rigid limits to discipline themselves. The old debt limit of \$100,000 may have been workable in 1889, perhaps, but is certainly obsolete now.

Present and future changes in government spending at all levels make a flexible tax system necessary.

- d. Highway gas tax diversion -- it is stated that diversion of the gas tax would "upset the 90% matching funds received for highways from the federal government." This is a gross exaggeration very cleverly used.

The truth is that the gas tax produces in one year over \$35 million, and the maximum that has been used to obtain matching federal funds is about half of that sum. While it is hypothetically possible for the Legislature by three-fifths vote to divert more than half the gas tax funds for "social needs," as suggested, no Legislature would be that stupid.

- e. State aid to local government -- flexibility for future revenue sharing between federal, state and local tax sources is absolutely necessary, because no one now knows in just what form it may develop. Since the Constitution requires "equal protection" for all, the "subsidy" possibility on page 11 could not actually occur.
5. Water rights - Article IX, page 11
    - a. Water rights are not "left up in the air." Existing rights are recognized and confirmed. Future rights are obtained by the same law we now have, and the right to appropriate them for beneficial use is assured. A "state agency" will have nothing to do with the right to future appropriation of water.
  6. Education, Article X, page 12
    - a. Kindergartens -- The proposed Constitution does not "open the door" to kindergartens in the public schools. It has always been open, for such school districts as may wish to support kindergarten classes.
  7. Eight-hour day - Article XII, page 14
    - a. 10-hour day -- flexibility to permit 4-day work weeks would be available. This is growing in popularity, and Montana should also be able to have it when the time comes.
  8. Voting section by section - page 17

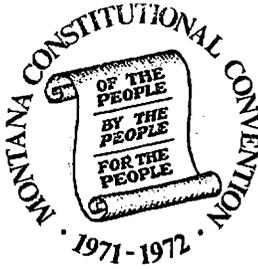
The proposed Constitution is a coordinated document, rearranged to be simple, readable, and in logical order. Much obsolete and unnecessary material has been omitted. There is no practical way to vote Article by Article on it, with the danger of having parts of the new and parts of the old all mixed up together. It would be like trying to put together part wagon and part automobile and expecting it to work.

These comments are submitted in the hope that they will be helpful to the people who have received the "Comparison." Constitution subject matter is not clear and easy for anyone. Sound criticism of the proposed Constitution is both helpful and healthy, as it aids the voter to decide for himself whether the new is better than the old. Unsound and misleading criticism is just the opposite, and harms the fair working of the political process. I hope by these statements to remedy some of that harm.

May 12, 1972.

Respectfully,

J. C. Garlington  
Delegate to Constitutional Convention  
District 18, Missoula, Montana.



MONTANA CONSTITUTIONAL CONVENTION  
STATE CAPITOL • HELENA, MONTANA 59601 • TELEPHONE 406/449-3750

May 17, 1972

Leo Graybill, Jr.  
President

To: Selected Convention Delegates  
From: Leo Graybill, Jr.  
Re: TELETHON PANELS

CCCI is holding time for five 2-hour Telethons between Wednesday and Sunday of the last week before the election. We have carefully selected panels for these Telethons, together with supporting casts, and enclosed you will find the schedule.

I wish that we could have used everyone. Obviously, we couldn't do that, and we had to make some selections. I have attempted to balance the panels, including some women delegates and including delegates from other parts of the State, and generally using articulate people. I hope no one will be offended by their assignments.

The supporting assignment is perhaps as important as the panel assignment. These people will answer telephones and write up the questions, and will be discussing by telephone with callers the issues raised by the Telethon in many cases. In each city I have also assigned a Coordinator, whose job it will be to run the show.

Additional specific instructions will be prepared and sent to you later. At this time, please note assignments, and if anyone cannot participate as scheduled, please notify me at once, preferably by telephone. Otherwise, we will assume that everyone will participate.

We feel that this person-to-person Telethon approach will cap the campaign and allow public access to the delegates at a crucial time. Please help us with your participation and cooperation.

*Leo Graybill, Jr.*

CONSTITUTIONAL CONVENTION TV PANELS

(MEMBERSHIP)

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Wednesday, May 31 - Missoula 8:00 - 10:00 P.M.

Panel: Graybill, Eck, McKeon, Murray, Harper

Support: Campbell, Bugbee, Robinson, Payne

Coordinator: Toole

Thursday, June 1 - Great Falls (KFBB) 7:00 - 9:00 P.M.

Panel: Graybill, Toole, Champoux, Babcock, Berthelson

Support: Erdman, Blend, Gysler, Reichert, Arbanas

Coordinator: Warden

Friday, June 2 - Great Falls (KRTV) Simulcast (Blgs.; Butte) 7:00 - 9:00 P.M.

Panel: Dahood, Garlington, Drum, Arbanas, Reichert

Support: Blend, Warden, Mansfield, Woodmansey, Rebal

Coordinate: Erdman

Saturday, June 3 - Billings (KULR) 8:00 - 10:00 P.M.

Panel: Brown, Graybill, McDonough, Eck, Garlington

Support: Blaylock, Rollins, Schiltz, Felt, Cate

Coordinate: Bowman

Sunday, June 4 - Helena (KBLL) 6:30 - 8:30 P.M.

Panel: Roeder, Toole, <sup>Berg</sup>~~Mutting~~, Robinson, Schiltz

Support: Brazier, Loendorf, Babcock, Harper, Payne

Coordinator: Burckhardt

Substitutes: Berg, Davis, Kelleher, Foster

ORGANIZATIONS WHICH HAVE ENDORSED THE  
PROPOSED CONSTITUTION

May 17, 1972

MONTANA EDUCATION ASSOCIATION  
MONTANA FARMERS UNION  
MONTANA AFL-CIO  
LEAGUE OF WOMEN VOTERS OF MONTANA  
AMERICAN ASSOCIATION OF UNIVERSITY WOMEN  
MONTANA COUNCIL OF COOPERATIVES  
MONTANA SHERIFFS AND PEACE OFFICERS ASSOCIATION  
MONTANA COMMON CAUSE  
MONTANA STUDENT PRESIDENTS ASSOCIATION  
MONTANA PARENT TEACHERS ASSOCIATION  
MONTANA CONSERVATION COUNCIL  
MONTANA AMERICAN CIVIL LIBERTIES UNION  
ANACONDA CHAMBER OF COMMERCE  
GREAT FALLS CHAMBER OF COMMERCE  
MONTANA ASSOCIATION OF INSURANCE AGENTS  
DISTRICT THREE BAR ASSOCIATION  
MISSOULA COUNTY DEMOCRATIC CENTRAL COMMITTEE  
SILVER BOW COUNTY DEMOCRATIC CENTRAL COMMITTEE  
MONTANA WILDLIFE FEDERATION  
CASCADE COUNTY COMMISSIONERS  
NEW DEMOCRATIC COALITION  
MONTANA ASSOCIATION OF CLASSROOM TEACHERS  
MONTANA LIBRARY ASSOCIATION  
COLLEGE OF GREAT FALLS STUDENT ASSOCIATION

CONCERNING THE CONSTITUTIONAL CONVENTION

DID YOU KNOW ?

DID YOU KNOW . . . There is a proposal before the Montana State Constitutional Convention for STATE OWNERSHIP of all WATER and MINERAL RIGHTS including all LAND? *Public Trust*

DID YOU KNOW . . . . There is a proposal before the Montana State Constitutional Convention. . . . To REMOVE YOUR BILL OF RIGHTS FROM THE CONSTITUTION? *Is such proposal*

DID YOU KNOW . . . . There is a proposal before the Montana Constitutional Convention . . . . . To REMOVE all AUTHORITY from the CITIES and COUNTIES for SELF GOVERNMENT AND SELF DETERMINATION? *#1 Answer*

DID YOU KNOW . . . . There is a proposal before the Montana State Constitutional Convention to REMOVE YOUR RIGHTS AS A SOVEREIGN STATE AND SURRENDER THOSE RIGHTS TO THE FEDERAL GOVERNMENT?

IF YOU DO NOT KNOW. . . . . CALL. . . . . HELENA 442-6670

Or write: DID YOU KNOW  
1150 11th Ave.  
Helena, Montana 59601

If passed, proposals such as these will create a STATE oligarchy

*General Mc Carthy a group from Hamilton  
published by Ray Corby  
votes represent  
Gallatin County, Longsight Assoc.  
Hall " " Best Property  
center Assoc.*

## GUEST EDITORIAL

### "Praise the Lord and Pass the Constitution"

Pierce C. Mullen; Associate Professor and Head; Department of HGP  
(History, Government & Philosophy)

On the 23rd of March 1972, J. C. Garlington, a delegate to the Constitutional Convention, summarized the work of the convention and noted its implications for students and young people. "So, I shall be happy to face the waiting voters, and I have no apologies for our document... I think our Constitution is the finest gift to the young people of Montana that it is within our power to give. We are giving them the gift of participation in their present, and the management of their future, on a ship-of-state that is far more manageable and sensitive than the one which we have had."

I agree with Delegate Garlington. The proposed constitution was drafted by a group of dedicated people. They designed a system of distributing power to the people. And they did it without serving any particular or special interest. They did acknowledge the uniqueness of our Indian heritage and they honored the past and future contributions of Montana veterans. But they avoided the special legislation which abounds in the present document.

I plan to vote for the proposed constitution and for the unicameral legislature. This new document asks a fundamental question about a democracy: do you trust people? That is what the new constitution is all about. Whether or not a free people can rule themselves. I think that they can.