Billings Lawyer

Bill of Rights Reviewed

Gerald Neely

The voter 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 covered a large portion of the Convention working as a United Press (UP) reporter, 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 congenital inability 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 points this may only be true in his case.

Moreover, someone has to take the role of "devil's advocate" and stimulate true debate, says Neely which he does throughout his booklet, a portion of which is hearily reviewed here.

Deciding 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 75 people must vote for unicameralism to have it incorporated into the new constitution.

But, he points out, if 100 people vote on the constitution and only 50 cast their ballots on unicameralism, with 50 for it and 50 against it, unicameralism 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' Duties Considered

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

This is that the sections "direct themselves to the duties 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 recognize 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 as a special side issue, bail for all crimes, including murder, will be allowed.

–Ex-convicts can have all civil and political rights restored after termination of state supervision.

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

–An individual's privacy is not to be infringed 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 precluded 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 supervision, says Neely.

Eighteen-year-olds can't run for governor and certain offices which require a person to be at least 25 but they can run for Supreme Court justice or district court judge if they have practiced law for 5 years in Montana. They can also run for other offices.

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

Youths who are prevented at present may find that the laws have changed since they are now to be treated as adults.

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

Also 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 operation prior to the final decision.

–Citizens will have the right to know which includes the right to examine documents and to observe the deliberation 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 healthful 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 Possibilities

Neely points out some of the many 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 crewcut and a narrow tie, nor could a person selling property refuse to sell to a Republican, assuming each of these were the prevailing mode.

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 has much to offer.