

ORGANIZATION OF THE CONVENTION

NOVEMBER 1971

(Continued from last issue)

(Editors note: this is the second in a series of in-depth articles examining the proceedings of the Constitution Convention, much of which went unreported in the newspapers and on radio and TV).

Monday, November 29, 1971

Prior to the official call to order of the organizational-and official-session of the Constitutional Convention, the University of Montana Concert Band provided a concert in the rotunda of the capitol building in Helena.

It stood in stark contrast to the brief-and difficult-positioning of the various parties and interests of the day before.

The concert provided an additional amount of dignity to an occasion that comes infrequently to most states. A special performance by the University of Montana school of fine arts, the concert was chosen exclusively from the music of American composers.

Dressed in black, the young men and women moved from America the Beautiful to American Overture, an original work for bands which embodies the vitality and joy of the youthful American spirit.

In a driving succession of loyalty songs indigenous to the culture of Montana, the concluding number of the concert was Montana Medley, which was commissioned for the performance.

As the delegates positioned themselves in the well of the Montana House of Representatives, guests were escorted to the Chambers by Alex Blewett, Chairman of the Montana Constitutional Convention Commission.

The Convention was called to order by Governor Forrest H. Anderson, who received the gavel used by William A. Clark at the 1889 Montana Constitutional Convention.

A temporary secretary, sergeant at arms, and journal clerk were appointed, and after an invocation by the Rev. Lionel B. Simonson and the posting of the colors, the pledge of Allegiance was recited.

Following the playing of the national anthem, and the introduction of special guests-the State Supreme Court, elected state officials and the legislative leadership of the 1971 House and Senate-Governor Anderson addressed the assembled delegates. (see full text in this issue).

The oath of office was then administered by the Hon. James T. Harrison, Chief Justice of the Montana Supreme Court.

The program distributed at the Convention then called for the nomination and vote for the office of temporary President, with the Governor to declare that the person receiving a plur-

ality of votes cast be the duly elected temporary President. Nominations would then be in order for the office of President, with the temporary President presiding and announcing the person receiving a majority of the votes cast as the duly elected President of the Convention.

At the Democrat caucus of Sunday, Cedor Aronow of Shelby had been selected as their choice for the position of temporary President. For personal reasons Aronow had disclaimed any interest in the Presidency.

During the early morning hours of Monday, and up to the calling of the Convention to order, Republicans gathered in groups to determine who, if anyone, they would support for the coveted position of President of the Convention.

James Felt of Billings had made the decision to withdraw for the office after the banquet of Sunday night. Many-but not all-of the Democrat delegates felt bound by the caucus of Sunday evening to vote for the Democrat candidate for President, Leo Graybill, Jr. of Great Falls; many of the Democrats didn't feel bound in conscience or by any legal reasoning. The other candidates in the Democrat caucus clearly felt bound by the results that saw Graybill come to the fore over nine other candidates as the Democrat standard bearer.

Graybill had said at the Democrat caucus: "From now on we must have bipartisanship" and the Republicans believed that this meant with the office of Vice President. But some one must still be selected to run against Graybill to give an air of contest to the TV viewers.

One Democrat volunteered to nominate Felt; Graybill's response was not even close to being favorable.

In their search, the Republicans came up with Bruce Brown of Miles City. A standout Independent delegate with generally recognized abilities, and with an apparent lack of political ambition, he was the obvious choice. After breakfast on Monday morning, Republicans knew they had a candidate.

Charlie Mahoney of Helena, another leading Independent, did not veto the choice, a veto that would have been effective as far as Brown was concerned, had Mahoney chosen to exercise it.

As planned, Governor Anderson would recognize someone who would proceed to nominate Aronow as temporary President. Signals became crossed-if indeed they were ever clear. Anderson recognized Rev. George Harper, Independent delegate from Helena.

Harper had in hand a typewritten motion that read:

"Mr. Governor. I move that the votes for temporary president be cast by a written ballot placed in the ballot box by each delegate as his or her name is called. . . ."

EDITOR'S CORNER



NOTES AND ASIDES

***The Constitution must be approved by a majority of those voting "at the election." This poses some problems. If the vote is at the general or primary election, and 100,000 people vote, but only 50,000 vote on the constitution, is it the requirement that 50,001 of the 100,000 approve the constitution, or 25,001 approve it?

***Also, if the main document is put up for a vote, with a variety of side issues what happens if: 100,000 people vote on the main document, but only 50,000 vote on the side issues? Would each side issue need 50,001 votes in its favor to be included?

***The proposed Montana plan for Judicial improvement would allow a District Judge to delegate responsibilities for cases not involving criminal felonies to a magistrate, which would be the Justice of the peace replacement.

***However, the magistrate would not be an attorney if none were available. Under the plan, it would be possible for the non-lawyer magistrate to try a \$ 1 million jury personal injury case.

***The proposed plan would also eliminate the current procedure of retrying a traffic ticket case in District Court if one lost in police court. Under the plan, a loss in magistrate court on a traffic ticket would have to be appealed to the Montana Supreme Court. Who pays for the transcript? The state in many cases. If there can even be one. Because of the volume of work in Justice Courts and Police Courts, to make them courts of record would mean that we'd need four times as many court reporters than we now have. And we don't have enough now, and are having increasing problems in obtaining them. Lets give more thought to the Ramifications of the proposed judicial reform.

G. NEELY



Organization Continued

The motion was longer than quoted above, but its import was clear to a few of the delegates; its length had confused others. What Harper was proposing was that the Convention vote by secret ballot. Which was what the informal Saturday meeting of the delegates had decided.

Not considered by the majority party at the Convention—the Democrats—was that by secret ballot the delegates would be free to vote as they pleased and would not be firmly and publicly bound by the caucus selecting Graybill on Sunday.

Miles Romney, a Hamilton Democrat, after stating that he was "taken by surprise", made a substitute motion and moved that "the election of all officers be made via an open roll call" vote.

His temporary parliamentarian on his right, Governor Anderson, in an obvious move towards bipartisanship, said that he was going to "ask Jim Lucas to be parliamentarian." Lucas was the previous speaker of the House on the Republican side of the fence, opposite Democrat Governor Anderson.

The substitute motion was ruled as being in order and Lucas was told to "just stand by" by Anderson. The Chair ruled that the motion was not debatable. Republican Wade J. Dahood of Anaconda was the only delegate of the 100 that was absent.

The vote was 50-49 to have an open ballot. The Convention by an official vote had overturned its unofficial but highly unanimous unofficial ruling of Saturday. There would be open balloting and delegates would be in full view of their party leaders.

In a move that most obviously influenced the remainder of the Convention, the closeness of the balloting was only emphasized by Dahood's later statement that had he not been at a funeral and thus late that first day, he would have voted for the closed ballot and against the open ballot. The vote would have been tied. And with no rules under which to operate, Anderson would not have been able to break the tie. The motion would have lost and we can only speculate on the consequent result.

Carl Davis, Dillon Democrat, nominated Cedar Aronow as Temporary President. Jim Felt termed "regrettable" that the Convention arrived at a "different decision" on Saturday, and a "decision without debate".

Fred Martin of Livingston moved that nomination be closed and the convention voted 98-1 for Aronow with R.J. Studer, Billings Republican as the only "Nay" vote.

After being escorted to the Chair, Aronow asked for nominations. Magnus Aasheim, of Antelope, Montana, placed in nomination the name of Leo Graybill, Jr. Jim Felt, in noting his unwillingness to run for the Presidency, nominated Bruce Brown for the Presidency.

Otto Habedank, a Sidney Republican then noted that a "proceeding was held which I did not attend because I was not invited" and said that he had heard thirteen candidates speak of their interest in the Presidency and that he intended "to nominate the people who spoke to us."

In short order Habedank nominated the remaining twelve. Each in turn withdrew. Blaylock of Laurel indicated that he was bound by the caucus; Toole of Missoula stated: "I'm not a candidate".

The role call was called; each delegate voted. Jerome Cate of Billings rose to explain before casting his vote. He ticked off his contributions as a loyal Democrat and said that that

Continued Next Page

OPENING ADDRESS

ADDRESS TO THE CONSTITUTIONAL CONVENTION BY GOVERNOR FORREST H. ANDERSON, MONDAY, NOVEMBER 29, 1971.

The Constitutional Convention will re-establish the foundation of law government in this state.

I believe this is a profound expression of our fundamental belief in self government.

The people of Montana called this Convention.

They elected you as delegates.

And they will ultimately approve or reject the Constitution you write.

A properly written Constitution will define the structure and responsibilities of government and provide for the protection of the rights of the people of this State.

Many generations of Montanans not yet born will live under these laws if you do your job well.

Constant change and emergence of new ideas and beliefs will challenge the wisdom of your efforts.

And each of you will leave a mark forever on the history of Montana.

But more importantly, you have an opportunity to initiate a new history—a history of dynamic and responsive state government.

Montana's present Constitution is an expression of the distrust in government that was prevalent when it was written in 1889.

It imposes strict limitations of the exercise of the powers of government—legislative, executive and judicial.

It is burdened with accumulated statutory detail.

And it restricts and confuses the capability of state government to respond to the rapidly changing problems of modern society.

I do not believe, however, that the entire Constitution should be stricken. Because there are sections with enduring statements of the rights of individuals and precise definitions of the responsibilities of state government.

I believe revision of the Montana Constitution must accomplish essential objectives.

It must establish the structures and responsibilities of state and local government.

It must guarantee the rights of the individual in this state.

It must free state government from the strictures that shackle us to the past and it must allow us to move freely into the future.

In this century, the balance of power within the American Federal System has been distorted. The states have failed to act—too often because of constitutional restrictions—and the federal government has been forced to exercise the needed authority.

This has occurred in Montana and every other state in the union. And if the decline of the states within the national system continues, they will become nothing more than federal subdivisions. We must not allow this to happen.

There are going to be changes in this State in the coming years. We cannot expect Montana to remain as it is forever.

Continued Next Column

If this Convention does not revitalize our state government and give it the authority to act and solve problems, it may be one step further in the decline of the Federal System and the destiny of Montana will be decided in Washington, D. C.

The people have demonstrated that we are willing and able to solve our problems.

We have fought to lift this State up from its colonial status in the National economy.

We are working to preserve our unequalled environment.

We have undertaken many programs to improve our state and local governments.

We are now beginning the task of revising our State Constitution.

And by these acts and others, Montanans are saying that they will not forfeit their right to determine the necessary policies for the right to govern.

The purpose of the Constitutional Convention is to write a document that will be the basis and the inspiration of a dynamic and responsive state government.

And the timeless wisdom of the National Constitution should be the inspiration for the document you write.

Like the national prototype, our Constitution must not include extraneous statutory provisions that are properly within the jurisdiction of the Legislature.

And like the national prototype, our Constitution must be a statement of your faith and the belief that good and decent men and women will govern this State in the coming years.

You should not be afraid to include new and progressive ideas in the Constitution. Passage of the Referendum calling for this Convention, Executive Reorganization and the 19-year old vote are proof that the people of Montana recognize the need for change.

And if a proposal is good, it will be approved by the people.

There are those who consider this Constitutional Convention to be an extension of the legislative process. And they would make it the responsibility of this Assembly to decide issues of present importance—now and forever. I believe if this is allowed to happen, the intent of the Constitution will be compromised and its hope of success will be destroyed.

You are here to write a constitution—not a body of statutes. And this document must withstand the seasons of history—not just the climate of current opinion.

I wish you well.

Organization Continued

was how he would vote "if this were a legislative session" but added that "this is not a legislative session" and that party lines should "not be dictated" and he cast his vote for the Independent Brown.

By a vote of 60-38, Graybill was selected as President of the Convention. Dahood was excused. Independent Oscar L. Anderson of Sidney passed. No Independents voted for Graybill. Don Scanlin and Jerome Cate, both Billings Democrats, voted for Brown. Republicans Ervin Gysler (Fort Benton), Mae Nan Robinson (Missoula), Robert Noble (Great Falls) and Robert Woodmansey (Great Falls) all voted for Great Falls Democrat Leo Graybill, Jr.

CONTINUED FUTURE ISSUES

THE NEWS IN REVIEW

***The Constitutional Convention's Public Information Committee has come up with a proposal to set up a Citizen Corps which would work to 'sell' the new constitution which will be written in Helena this winter. The corps would campaign for the new constitution prior to the vote on it at next fall's general election." Tribune, Jan. 13, 1972.

***"By placing the best interest of Montana today and for years to come first and setting aside self-interests, we believe and adopt when it is polished in its final form." Daily Inter Lake Editorial, Kalispell, Jan. 16, 1972.

***"The Montana Citizens Conference on the State Legislature has proposed a legislative article for the consideration . . . delegates which contains a number of good suggestions. It also contains a rather poor suggestion . . . One of the best, in our opinion, is a provision that requires legislative committee meetings to be open, and that recorded votes be cast on all legislation. . . A suggestion we disagree with, however, is one that would require a majority of ALL legislators to vote in

favor of a bill before it could become law. The present system requires a majority of those present and voting to pass legislation." Montana Standard, Butte, Editorial, Jan. 13, 1972.

***"The courthouse crowd, education and highway interests, and others will be button-holing delegates, attempting to get statutory law written into the constitution—something that had best be left to the legislature." Independent Record, Helena, Jan. 16, 1972.

***"All Montanans are looking for a constitution to be written in simple, understandable language. Archaic presentation just not be allowed and the document should be so strong as to prevent lobbyists and special interests from exercising any control."

***"Montana Constitutional Convention delegates would do well to handle the private school funding problem in much the same manner as it is done at present—leave it alone." Billings Gazette, Jan. 12, 1972.

50 issue subscription, back issues with each subscription, \$15.00. Educational and group discussion quantity rates on request. Articles of fact or opinion of 600 words or less needed. Inquire first. Check or money order with subscriptions.

Editor Gerald J. Neely, Billings, Montana
Associate Editor Laury Eck, Missoula, Montana
Business Manager Michael Neely, Billings, Montana

The Con-Con Newsletter is a 50-issue, one year newsletter that is non-partisan and with no political "bones" to pick, dedicated to seeing that the upcoming Constitutional Convention is not an expensive exercise in futility.

BULK RATE
U.S. POSTAGE
PAID
PERMIT NO. 942
BILLINGS, MONTANA

Constitution
of the
State of Montana

CON CON
NEWSLETTER

P.O. BOX 1643
BILLINGS, MONTANA 59103

Copyright, ©, 1971, by Gerald J. Neely. All rights reserved. No portion of this Newsletter may be reproduced without the express written permission of the Editor, Gerald J. Neely, P.O. Box 1643, Billings, Mont., 59103