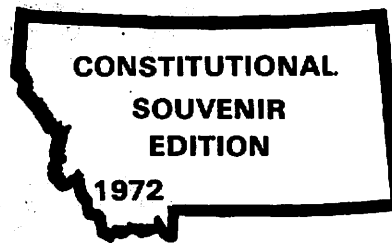


# THE GALLATIN VOICE

VOLUME 1, NO. 2

MAY, 1972



## VIEWS

**THE PROPOSED CONSTITUTION:**

**WHAT IT'S ALL ABOUT . . . . . by the Staff**

## EDITORIAL

**POLITICAL PHILOSOPHY**

**Was It Evident at  
the Constitutional Convention? . . . by D. C. Thompson**

# The Choice Is Yours . . .

This issue of the Voice focuses on the proposed state constitution, which Montanans must adopt or reject on June 6.

A magazine, or any publication, has several duties to its readers.

The first duty is to present the news in such a fashion that people can understand it.

The second duty is to present different views of the news as proportionately as possible.

Another duty is to keep the editorial section of the publication separate from the stories so that no confusion can result.

And a last and extremely important function of the publication is to take a stand on issues, as rational a stand as possible, and let people know what you believe editorially.

One woman last week refused to be interviewed because, she said, "I refuse to contribute to a publication that could be anti the new constitution."

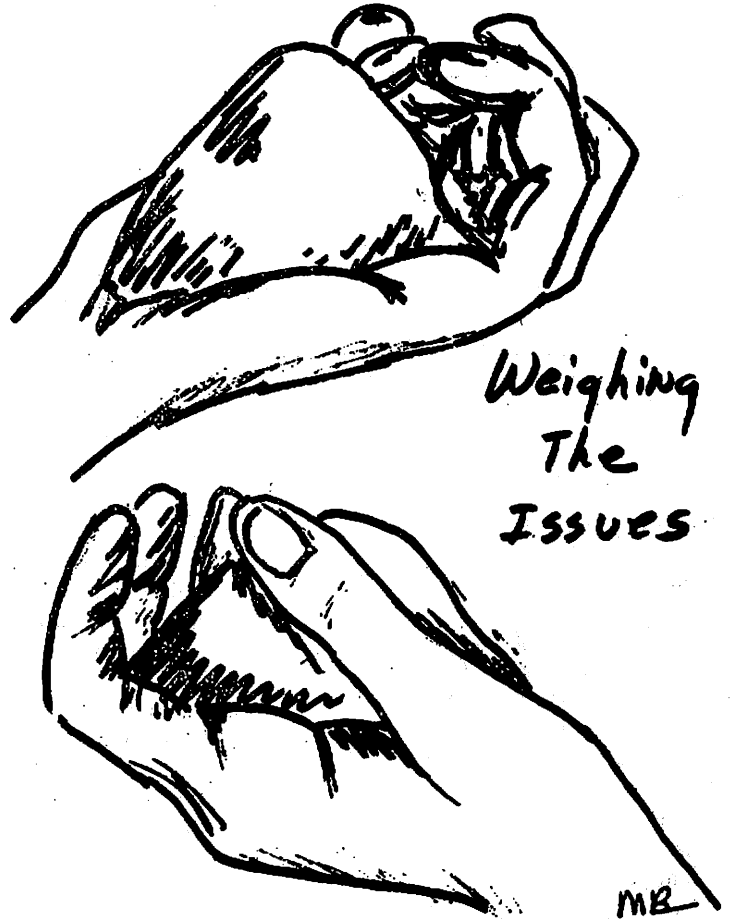
It is unfortunate that she would not present her case.

For those who do not speak only harm their cause.

The man on the street is not a mind reader. He should be given more credit for intelligence than he gets.

Put all the available information in front of him and let him make his choices. This is what The Gallatin Voice has done in this publication.

What other alternative is there?



Many Gallatin County residents know little or nothing about the proposed Montana constitution.

Although the following Gallatin residents were informed about the proposed constitution, this reporter found that only about one-third of the people interviewed had even a basic idea what the new document contained.

"The delegates to the Constitutional Convention were capable and did a good job overall," said Ed Clarkin, Belgrade druggist.

"But I would have liked the Convention to have been less political and to have had fewer lobbyists," he added.

## Up-To-Date Approach

"The proposed constitution appears to present a more modern up-to-date approach to state government," according to Ray Hartmen, Bozeman merchant.

He also said he preferred a small, unicameral legislature and liked the

fact that he will be given the chance to vote for it.

Two other businessmen objected to the proposed constitution.

A Bozeman merchant felt that the "proposed constitution was no better than the present one and is one sided and not representative of what the people want.

"For example, the constitution being offered to the voters doesn't protect Montana businessmen. It should regulate to a greater extent out-of-state businessmen who come into Montana to do business.

"The Constitutional Convention also should have combined more agencies; as it now stands, the proposed constitution will not save the state any money."

## Wasted Tax Money

Another Bozeman businessman concluded that "the tax money spent on the Constitutional Convention was a waste.

"The sections in the proposed

constitution which are not included in the present one could have been added by amendments without having the whole document rewritten."

A librarian at the Bozeman Public Library felt "the proposed constitution, compared to the present one, has more effectively defined individual liberties.

"The environmental issues included in the proposed constitution are good, but the convention could have done more to protect the environment."

She also added that the right-to-work section should not have been dropped and that the voters should have had the chance to vote upon it.

## Individual Rights

Will Kirkendall, an MSU student, said that "the proposed constitution emphasized environmental rights over rights of the individual.

"The constitution of Montana, whether it is the present or the pro-

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# The Choice Is Yours

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posed one, should strike a proper balance between the rights of the individual and those of the environment."

Another university student, David Roesner, sees the proposed constitution as an improvement over the present one.

However, he added that he would have liked to have seen a more drastic change between the present and proposed constitutions.

"I don't like the appointment of the members of the Board of Regents by the governor," he said. "They should either be elected or appointed by a special committee."

## Water Rights

Mrs. Lou Goldenstein, wife of a Gallatin rancher, expressed concern over the water rights section of the proposed constitution.

"As I understand it," she said, "the water rights, according to the proposed constitution, belong to the state of Montana to be held for its people rather than to the landowner."

"If that is true, that might create difficulties for ranchers and farmers."

"I want to study it more before I draw a definite conclusion whether to vote for or against the proposed constitution."

## Rancher's Opinion

Jack Nash, an area rancher, said that the brevity of the proposed constitution appealed to him.

He also felt that the unicameral legislature would make a more efficient governing body.

When asked about the water rights section of the proposed constitution, he replied that "the state government will have more power in the matter of water rights, but this will not jeopardize the rights of the farmers."

"Another advantage of the proposed document is that the number of departments in the executive branch has been reduced to 20."

## Doesn't Limit Debt

Mack Anderson, Belgrade realtor, was displeased with the proposed constitution on the grounds that it does not limit the debts of the state.

Although the proposed constitution gives the power to authorize a state debt, he did not feel that this provided enough of a check on debt

limitations.

"The proposed constitution makes the government more flexible and responsive and brings the structure of government in line with present day needs," said Dr. Irving Dayton, vice-president of academic affairs at MSU.

"The unicameral legislature, for example, would be cheaper and more effective," he added.

Dr. Dayton also approved of the constitutional status of the regents stated in the proposed constitution because it "separates them from the political process; the present system doesn't protect the university from this."

## Why Apathetic?

When asked why the many voters seem to be apathetic about the constitution, some residents accepted the blame themselves for not being informed, others blamed the press and convention delegates.

A Billings salesman passing through the county said that "The voters just don't give a damn."

"The funnies and the sports page are often read before or instead of articles on political issues."

John Free, government teacher at

Bozeman Senior High School, said that enough material about both constitutions has been and will be available so that "a person who wants to be informed has had and will have an opportunity to learn about the constitutional issues."

Dr. Dayton placed the responsibility of the uninformed public upon the press. "There have been no good, short summaries of the constitutional situation," he said.

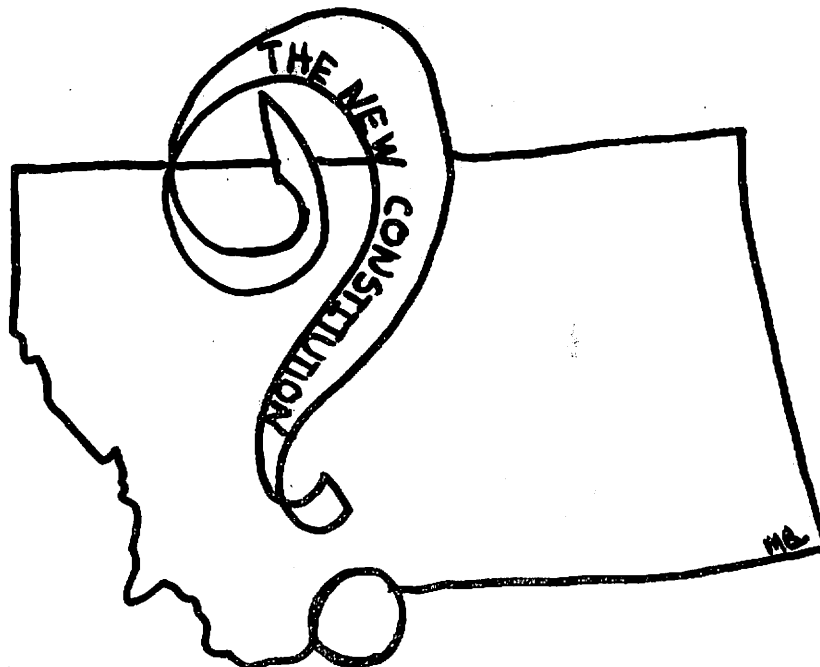
## Need Shorter Articles

A teacher from Bozeman Senior High School said that newspaper articles about the constitutions have been too long and suggested short, explanatory features which compare the proposed constitution with the present one.

She added that radio and television stations could also do more to inform the voters.

Gallatin County residents are reminded that copies of the proposed constitution will be sent out to all registered voters.

Copies of both the present and the proposed constitutions are now available at the Bozeman Public and MSU libraries.



People don't know what  
it's all about . . . .

## 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 congenial 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 briefly 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 51 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 80 cast their ballots on unicameralism, with 50 for it and 30 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 administrators would be unconstitutional unless more specific legislation is passed later.

Youths who are juveniles 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 decisions.

--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,

(continued on following page)

# Murphy Supports Ag Dept.

By Korinn Walker

During the environmental and agriculture committee hearings at the Constitutional Convention there was a lot of interest expressed by farm organizations to include the provision for a department of agriculture in the new document.

Among those who supported the proposal was Terry Murphy, legislator from Jefferson-Broadwater counties.

In a recent interview Murphy explained his support saying, "Agriculture should be a unified department rather than divided up.

"The Livestock Commission and all of the other agriculture agencies should be included in one department.

"Apparently, the delegates went along with the idea."

## Some Dissention

There was some dissention, however.

"Some thought that this should be left up to the legislature," said Murphy, "but farming and ranching are the biggest businesses in the state and deserve some constitutional recognition."

Murphy went on to explain that such a department could become even more important if the federal government proceeds with the proposal to do away with the federal department of agriculture which is presently being considered.

The old constitution provides only for a Livestock Commission, probably because, said Murphy, "livestock was the main agricultural activity in the state at that time."

"We need to provide close coordination in agriculture so fundamental government activities can be closely coordinated," Murphy continued.

## Water Rights

Another provision in the proposed constitution which agriculture interest groups were concerned about was water rights.

Under the new provisions all water will be the property of the state.

"I don't think that this is worth the paper it is printed on," said Murphy, "because the federal government can overrule us any time they want."

The main purpose behind this clause was to keep the federal govern-

ment from allocating Montana's water to other states, Murphy said.

He went on to say, "We fought hard to get in the clause that states, 'All existing rights to the use of any water rights for any useful or beneficial purpose are hereby recognized and confirmed.'"

"Will this apply only to the present holder of the water rights or will it be extended to a second party if the right is sold?" Murphy was asked.

He replied that he did not know, saying, "It wasn't intended that way, but it could work out that way."

In general, Murphy said, he was satisfied with the environmental article.

Section 2 of the article states, "All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective

requirements and standards for the reclamation of lands disturbed."

Could this affect agriculture?

"It could," said Murphy, "but it will be up to the legislature as to how much and in what ways."

Murphy added that careful study of the revision in the tax laws would be necessary before giving the constitution endorsement.

"They could have a tremendous impact on agriculture," he said.

Although he was not ready to approve the entire new constitution without further study, Murphy said that there were some very good provisions in it, such as single member districts, and that if they were not approved with the new constitution, he would like to see them later incorporated in Montana government.

## Bill of Rights Reviewed

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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 more interesting ramifications which come to mind as a result of the new discrimination section in the proposed constitution:

1. A Jaycee Club could not ban women, nor could the YWCA ban 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 reason.

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 one 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.

Melvin Speaks . . .

# Constitution Is Flexible

By R. L. Ames

"Flexibility seems to be the whole substance of the proposed constitution."

This was one statement made by J. Mason Melvin, Con-Con delegate, in an address to the members of Trout Unlimited recently.

"The proposed constitution provides the people with greater access to the government," said Melvin, "and allows greater participation by the people."

Melvin said that one of the problems with the 1889 constitution was that it locked in too many things, so that the legislature could not do anything about them.

## Unlimited Debt

The proposed constitution removes the limit to which the state may go into debt, substituting the requirement that either two-thirds of the members of each legislative house or a simple majority of the electors voting on the question must approve any state debt.

"The debt limit in the present constitution is \$100,000," Melvin noted. "That was probably a pretty fair amount of money a hundred years ago."

"Anyway, the state has gotten around this debt ceiling through the use of bonds."

"The last figure I had, the state had a bondable debt of 80 million dollars."

## Judges Get Mileage

Melvin also talked about the judiciary article in the proposed constitution.

"In the present constitution," he said, "judges are forbidden to receive mileage and travel expenses."

"But judges do have these expenses and the proposed constitution will permit them to collect on them."

Melvin noted that there was a lot of misunderstanding concerning the number of justices of the peace per county allowed under the proposed constitution.

He felt that some of this misunderstanding had arisen because of the wording of the section in the constitution.

## One Per County?

Article VII, section 5.1, of the proposed constitution, states:

"(1) There shall be elected in each county at least one justice of the peace with qualifications, training and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings."

Melvin explained that this did not mean that every county would have only one justice of the peace; the legislature, in section 5.3 of Article VII, is authorized to provide additional j. p.'s in each county.

He noted that there were presently 172 or so justices in the state and that the present constitution allows "two per organized township."

He also pointed out that the legislature would be able to determine qualifications for j. p.'s and that all j. p.'s would be paid a salary, doing away with the fee basis upon which some j. p.'s are paid now.

## J. P. Facilities

"Who will be providing these facilities?" a man in the audience asked.

"The county will be expected to

provide them," Melvin replied.

"Will it be a courtroom?" another man asked.

"It will vary from place to place, I think," Melvin answered. "There's a good possibility that in some places the county commissioners will request the district judge to share his courtroom facilities with the j.p.'s."

Melvin noted that a recent Montana statute already required "dignified surroundings" for j.p.'s.

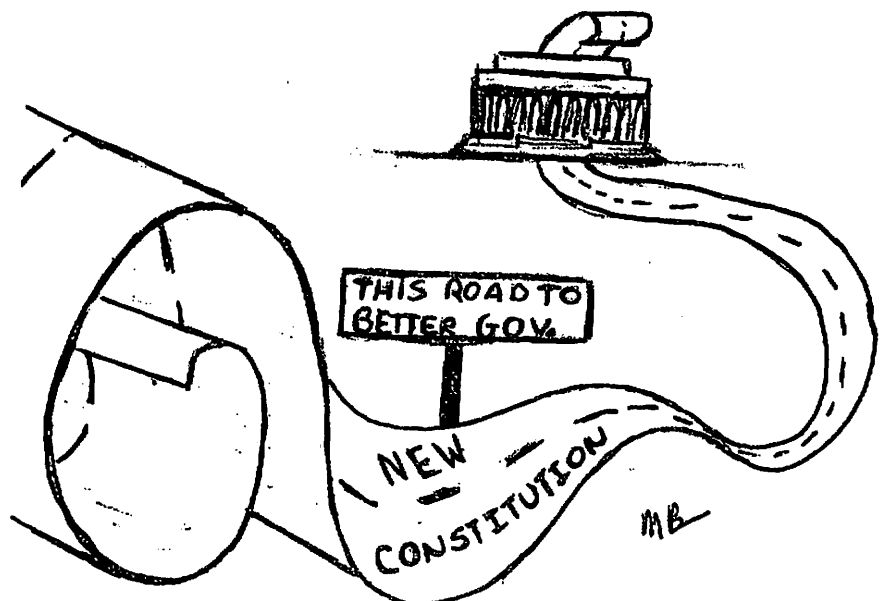
"Is there anything in the present statute directing counties to supply these dignified surroundings?" Melvin was asked.

"No," Melvin replied, "as I read the statute, it says counties may provide dignified surroundings."

"There is nothing in this proposed constitution directing the counties, specifically, to provide dignified surroundings either," the man noted.

"Well," Melvin replied, "it says 'provided by law' so I guess the legislature could provide a law to that effect."

However, reading the proposed constitution, one notes that it does not say "provided by law" but merely "provided".



# One House Or Two?

By Yvonne Roy

The proposed constitution will include a bicameral (two house) legislature unless the majority of the public votes for a unicameral (one house) legislature.

This question of bicameral or unicameral is of the utmost importance because, in the event a unicameral legislature should win, there would be a great change in Montana's governmental body.

## Committee Comments

Members of the constitutional convention committee for a unicameral legislature gave the following reasons for its superiority:

1--Rural representation would be better in a unicameral legislature.

2--Deliberation. A unicameral legislature results in better policies, more carefully written laws, and more thoughtfully considered legislation.

3--Lower Cost and Greater Independence. Money would be saved in a unicameral legislature through the elimination of duplication in staff, printing, and other legislative operating expenses. The money saved could be used for well paid staff, the single most important factor in counterbalancing lobbying pressures and assuring an intellectual independence.

4--Accountable and Visible. A legislator will carefully consider his actions because there is no other house to blame. The laws are passed in a "fish bowl."

5--More Responsible. Political deadlocks and impasses will be impossible. The people want a legislature that is structured to reflect the will of the majority instead of one that traditionally operates to protect the will of the minority.

6--Difficult for Lobbyists to Control. In a unicameral body of 100, 51 legislators would constitute a majority to pass a bill. In a senate of 40, only 21 senators can kill a bill already passed by the other house. Obviously it is easier for lobbyists to control and influence 21 than 51 legislators.

7--More Efficient. There is less confusion. Better debate procedures result when all the pros and cons are con-

sidered before a vote is taken. Dual committees are eliminated and it is unnecessary to have two public hearings on every bill.

Bills cannot be introduced and passed in one house on the assumption (and sometimes prior agreement) that they will be killed in the other house.

## Pros of Bicameralism

"A bicameral legislature is indeed the best form of government," according to Tom Winsor. "Those who favor a unicameral legislature seem to be unaware of the vast amounts of information available as to the function of the two house legislature.

"In our tradition, the two house legislature began in England with the House of Lords and the House of Commons. Through the two houses people could control the actions and power of the king or state, as it may be.

"Government is instituted by the people, but by the mere fact that it is a body separated from the people, it may not reflect the people's desires. A two house legislature protects the people by limiting the state."

Winsor continued, "Countries where unicameral houses are found are characterized by totalitarianism. Some examples are the revolutionary French assembly, Spain, the Soviet Union and Nazi Germany.

"A two house legislature protects the people because of its system of checks and balances."

## Nebraska Example

"The legislature of Nebraska is being used as an example of a workable unicameral legislature by advocates of unicameralism," stated Winsor.

"But actually, there is no comparison between the kind of government Nebraska and Montana demands. Unicameralism does work to a certain extent in Nebraska but Nebraska is not subject to pressures as Montana with very strong companies and very strong union influence.

"The state of Nebraska is basically a conservative agricultural community. Montana has an agriculturally based economy with a heavy base on indus-

try - it is not as harmonious as Nebraska.

"Even with Nebraska's supposed harmony problems have arisen from their unicameral legislature.

"Advocates of a unicameral legislature state that many times a member of the house will propose a bill, to appease people back home, in hopes that his friends in the senate will throw it out. This, they claim, is dishonest.

"The legislature of Nebraska passes twice as many laws as most states, many of which would be struck in a two house legislature.

"Nebraska is plagued with many nonsense laws because there is no second house."

## False Economy

Winsor went on to say that Nebraska has found false economy with their unicameral legislature. It costs Nebraska more than legislatures in comparable states.

"Even in Nebraska, unicameralism is not an ideal situation," he said. "Many of the people are not aware of who their senators are, much less what they're doing. A one house legislature does not captivate the voter's attention.

"Montana has an interesting legislative body. This is one of the most important aspects of government -- the fact that the people are interested in it. Montana is blessed with an exciting political scene."

## Psychopolitics

"One of the approaches of analyzing government could be called psychopolitics," Winsor stated. "This is a term used to describe human interactions rather than theory.

"Any legislative body develops as a social group, like a club. As a result outsiders have a hard time 'getting in' or having their opinions heard.

"In a bicameral legislature, at least there are two such clubs instead of one, and each house has the opportunity of introducing new ideas to the other.

"A unicameral legislature operates much like a closed club with no checks and balances.

(continued on next page)

# One House Or Two?

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"People stand a better chance of being heard in a bicameral legislature."

## Economically No Difference

"Many people claim that a unicameral legislature would be more economical, but actually the budgets for both unicameral and bicameral would be about the same," explained Winsor.

"While there aren't as many men to pay there is just as much work to be done. More full time help, such as secretaries, etc. would have to be hired.

"At the same time, the legislative sessions in a unicameral legislature would be longer and there would be more of them.

"The Nebraskan legislature meets for longer periods of time.

"Money spent on the legislature in Montana is only a drop in the bucket compared to other expenditures.

"People shouldn't complain about spending for such an important part of the state.

"Montana's last legislative session, composed of one regular session and two special sessions, cost less than one month's welfare checks."

## Efficiency vs. Democracy

"Efficiency and democracy are nearly diametrically opposed," stated Winsor. "Where there is complete efficiency, there is little concern for the people's wishes.

"The present legislative system is not noted for its efficiency and thank heavens for that.

"A two house system protect different interests by hearing more arguments on more issues and, because of the two houses, each issue has two chances of being saved or killed.

"Within two years, I am convinced, there will be a full-time professional legislature, no longer a citizen's legislature.

"Running through every provision of the proposed Constitution are the words 'as the legislature shall or may provide' and 'as provided by law.'"

--Gerald Neely, Billings attorney.

"No man has the right to initiate (start) the use of force against another person. A man's right to life, however, permits him to use force in self-defense against a threat (initiation of force by someone else)".

--Joyce Jonesin "Citizenship Education."

"The goal of government is not necessarily to pass laws but also to protect people.

"From the turmoil of two houses, which is more democratic than one, come more of the people's choices.

"Government constantly verses people for power. A bicameral legislature gives more power to the people.

"By voting in a unicameral legislature, people will be voting out many of their democratic rights."

## Root of Power

"Power originates with the people,"

stated Winsor, "and for the legislature to have more power it must take it from the people.

"Too many times people interpret the word democracy merely as the right to vote and they forget it means many rights.

"All rights not specified to the state are reserved to the people. The more rights given to the government, the more rights removed from the people.

"A true democracy leaves people alone as much as possible to make their own decisions."



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Jim Zimbric .....	587-3701



Bozeman Attorney . . .

# Judicial System Changed

By AnnaBelle Phillips

"Paraphrasing Article III, Section 1, of the U.S. Constitution is, basically, the best method of providing a court system."

This is the opinion of Bozeman Attorney McKinley Anderson who feels this should have been done in drawing up Article VII, "The Judiciary", in the new constitution which is proposed for Montana.

A former county attorney and current Public Defender for Gallatin County, Anderson pointed out that the judicial power shall be vested in one Supreme Court and in such inferior courts as the Congress may, from time to time, ordain and establish.

"It also provides that the judges, both of the Supreme and inferior courts, shall hold their offices during good behavior and receive a compensation which shall not be diminished during their continuance in office," he said.

## His Reasons

Anderson cited the following as the reasons he believes the article in the U.S. Constitution is best:

. . . It allows Congress to provide a court system which is adequate for the growth of the population, expanding economy and changes in the technical society without being bound by a strict command of a constitutional prohibition.

. . . It provides a system whereby judges may have a life appointment. I believe that anyone who has to run for public office is subject to pressures from the electors. A judge should be completely free from these pressures and be able to determine from the standpoint of law what the law is and apply it to the facts of each individual case.

. . . It provides adequate rules for governing the court system which can be changed from time to time.

## "Our Law"

"Under our present and proposed Montana constitutions, all of our judges are required to run for office," he pointed out, noting that the new constitution would change the terms from six to eight years for supreme

court justices, four to six for district judges and two to four for justices of the peace.

"New qualifications would require the high court justices and district judges to be an attorney who has had five years of practice, but no such requirement is set forth for justices of the peace,"

He added that "actually, the justice court system is preserved in name only."

## Outline Changes

Anderson pointed out that Section 1 of the new constitution's Judiciary Article is changed in that it allows the legislature to establish 'inferior' courts, such as small claims courts and intermediate courts of appeal.

It also provides that the senate may no longer set as a Court of Impeachment.

"Basically, Supreme Court Jurisdiction under the new proposal is the same," he said. "However, Section 2 would recognize the right of the Supreme Court to make rules and decisions and outline procedures for all courts in the state and for the conduct of all members of the bar.

"It also grants the Legislature the

right to review and disapprove these rules and regulations for a period of two sessions following publication."

He said Section 3 implies that the court can set up a procedure for a lawyer to disqualify a Supreme Court judge.

"This has never been done before," Anderson said. "But, recognition of the right of disqualification of high court judges is certainly implied."

## Section 4

Under the new constitution, a person aggrieved by an administrative decision may, by legislative approval, appeal directly to the district court, he said, adding that this would provide for review of any decisions of any board, such as school boards, city and county commissioners and state agencies.

"This is good because it cuts down on the length of time it now takes to obtain such decisions and it is also less costly," Anderson maintains.

For example, he said that now a school board decision must be taken to the county superintendent, then to the State Board of Education, then to the district court and, finally, appeal-

(continued on next page)

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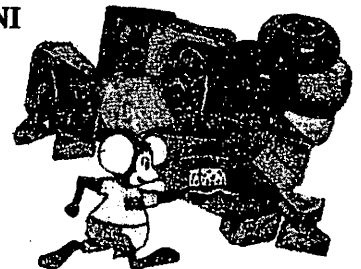
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# Bozeman Attorney . . .

(continued from preceding page)

ed to the State Supreme Court.

## Justice Courts

"Under Section 5, justice of the peace courts -- the courts in which most people meet Montana justice for misdemeanors and small claims -- are abolished, as we know them," Anderson said. "The only thing that remains is the name of 'justice of the peace', which goes back to a term borrowed from merry Old England."

He explained that the present constitution provides for two justices of the peace for each township in a county, adding that:

"Some justices are paid a salary on the basis of population in each township while others are paid under an archaic fee basis."

## As It Now Is

... At present there are no qualifications set forth for justices of the peace and, in many places, the positions are filled by retired people and those with other jobs who act as a JP as a public service.

... Throughout the state, justices of the peace do not have adequate quarters in a courthouse or municipal building to provide for the decorum that should attend a court when inquiring into the guilt or innocence or settling of disputes between parties.

## New Proposal

Anderson said that, under the new constitution:

... The legislature may set forth the qualifications, training and monthly compensation for justices of the peace. Thus, depending on the location, a JP could be trained in law.

... It is stipulated that appropriate quarters be provided for justice of the peace courts.

... The legislature is allowed to prescribe the jurisdiction, which is good because if these courts were allowed to handle cases up to \$10,000 it would eliminate a lot of the overburdening of district courts with petty cases.

"In other words, this section completely revitalizes the justice of the peace courts and provides the county with a tool which can take the burden from the district courts," the Public Defender said.

## Judicial Districts

As for the judicial district, the new constitution would allow the Supreme Court Chief Justice to assign a judge from one district to another, much as is done in Federal Courts, Anderson said.

"The method of nominating and selecting judges of the Supreme and district courts, as set forth in the new constitution, is a modified Missouri Plan," he stated adding that:

"This merely means that the nomination of judicial officers is made by a method decided by the legislature but, if a lawyer wished to run, even though he is not nominated and confirmed by the senate, he can do so."

## Sections 10 - 11

"Section 10, which provides for the forfeiture of a judicial position is new in that it provides that a judge may not run for any other elective public office," Anderson said.

As for Section 11, he said:

"It is a new method by which judges who become incompetent or physically disabled may be removed or retired so the position may be filled by a capable person."

## Deleted in Judiciary

Anderson pointed out that the new constitution takes away from the Judiciary Department, the election of a clerk of the supreme court, clerk of the district court and the county attorney.

"The only mention of the county attorney is made under Section 3, Number 2, of Article XI which pertains to local government," he said.

"Under this section, boards of county commissioners of two or more counties could agree to elect one county attorney to serve their respective counties. In essence, this provides for district attorneys."

Anderson charged that:

"This is one place where they (constitutional delegates) have pulled the wool over people's eyes. They have tried to change the present form of government.

"I mean that the main thing the Constitutional Convention has done is allowed the Legislature to consolidate county services in order to decrease taxes. I believe that this is commendable."



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People Must Choose . . .

# The Question of Gambling

By Yvonne Roy

On the ballot for the proposed constitution will be the side issue of gambling.

The question is not whether gambling should be legalized or not but whether the people or the legislature should have the right to legalize it.

## Gambling Legislation

Montana's current constitution provides: "The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets."

According to Gerald Neely, Billings lawyer, "This is a less restrictive provision than current Montana statutes which extend to all forms of gambling."

The proposed constitution contains this language: "All forms of gambling, lotteries, and gift enterprises are prohibited."

"The language suggested by the Convention is clearly more restrictive

of gambling than the current provision," writes Neely. "The above wording will be in effect if: 1) a majority of the voters vote "against" the proposal on the ballot, or 2) a majority of the voters voting on the main issue do not vote "for" or "against" the side issue, it thus having no effect and the wording in the main body controlling.

"Only if a majority of the voters voting on the main issue vote "for" the gambling ballot proposal will the following language be added to the Article," continued Neely. ". . . Unless authorized by acts of the legislature or by the people through initiative or referendum."

## People's Opinion

"This is a democratic country," stated Verne House, public affairs specialist, "and it seems more democratic if the people and the legislature are granted the right, through the constitution, to legalize gambling if

they want."

"I think the constitution should grant the legislature and the people the right to legalize gambling," said Paul Pattee, resident of Bozeman. "If, at some time in the future, the gambling issue materializes and the people want it legalized, I can't see where they should have to go to all the trouble of amending the constitution to get it in," Pattee stated.

His wife, Marie Pattee, said, "I don't feel gambling is a constitutional issue to begin with; but if it's going to be included in the state's constitution, I think we, as the people, and our representatives should be given the right to legalize it."

"I'm in favor of completely prohibiting gambling without any provisions in the constitution to legalize it," said a student of MSU. "If a man has enough money to gamble it away, then he has enough money to go to Nevada and do his gambling."

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# Increasing Autonomy

The increasing autonomy of the legislature was noted by Dr. Kenneth Nordtvedt, Bozeman, as he critically examined the new proposed state constitution.

Nordtvedt reviewed the proposed constitution from the basic premise that the purpose of a constitution is to protect people from excessive government power.

## Legislative Sessions

In particular, he noted section 6 under the Legislature article which discusses legislative sessions.

Citing the phrase "Any legislature may increase the limit on the length of any subsequent session," Nordtvedt commented that it was too easy for the legislature to increase their sessions.

"The less the legislature is in session, the better off the people are," he said. "A long legislative session can do mischief."

Unicameralism also came under fire by Nordtvedt which he termed "a process to streamline government and to make it easier for them to legislate."

Nordtvedt protested the fact that no recall of the legislature by the

people has been provided by the proposed constitution.

## Bill of Rights

The last sentence of section three in the Bill of Rights should be removed from the constitution, said Nordtvedt.

This section states that "In enjoying these rights, all persons recognize corresponding responsibilities."

"If there are some corresponding responsibilities," said Nordtvedt, "they should be specifically enumerated."

He also expressed disagreement with the words "without the showing of a compelling state interest" in the Right of Privacy section.

The section states "The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."

## Executive Section

Sections of the Executive article seem to be a holdover from the "King" concept, stated Nordtvedt.

"The governor has been given a great deal more power," he said.

One of the new provisions in this

section gives the governor power to appoint the heads of 20 departments, subject to senate confirmation.

## Revenue and Finance

Section 5c of the Revenue and Finance section seems to offer a very arbitrary section, Nordtvedt stressed.

It says, "The legislature may exempt from taxation any other classes of property." Some of the properties that may be exempted are listed prior to this section.

But, Nordtvedt finds the general exemption of section 5c potentially arbitrary.

## Education Section

"I think they should allow aid to sectarian schools," Nordtvedt said. "The time is coming when they must distinguish between universal education and public education."

Nordtvedt was referring to the section prohibiting aid to sectarian schools.

He also advocated pluralistic education which recognizes the advantages of both public and private schools.

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Dr. Verne House . . .

# Applauds Unicameralism

By Yvonne Roy

What would be the advantages of a unicameral legislature?

Are there enough benefits in unicameralism for Montana voters to change the state's governmental body?

According to Verne House, public affairs specialist in the Extension Economics Department at MSU, a unicameral legislature does have value.

## Good Points

"One thing I like about a unicameral legislature is that it still maintains a system of checks and balances," stated House. "Naturally Senators will represent areas with different interests and, because of their fewer number, they'll feel quite a responsibility to look into all the issues and do all they can for their districts."

House continued, "The one-man-one-vote decision by the Supreme Court eliminated practically any benefits bicameralism offered.

"Both houses of a bicameral legislature must be appropriated according to population. As a result each represents the same interests.

"For all practical purposes there is no significant difference between the bicameral and the unicameral legislature."

## Dynamic Society

"Whether we like it or not our society is changing," said House. "It's becoming dynamic.

"This creates pressures on institutions of all kinds and these institutions must adapt to the changing conditions in our country.

"Our legislative institutions must also become more responsive. We can look at our National Congress as an example of what's happening in our bicameral legislative system."

"At the national level, governmental power has shifted from the Congress to the Executive," House explained. "This is occurring because the Executive branch controls the budgetary review mechanism through the General Accounting Office, and the use of programming planning and the budgeting system, PPBS.

"The power struggle between Congress and the Executive is the underlying reason that President Nixon's

revenue-sharing proposal is moving very slowly in Congress.

"Under the present system of providing federal aid through ear-marked funds, Congress maintains considerable power over allocation of federal dollars."

According to House this revenue-sharing proposal will result in local and state governments looking to the Executive branch rather than the legislative branch for federal funds.

## Flow of Power

House continued, "This 'flow of power' is happening all over the nation. Power is flowing from the state legislatures to executive branches and to the federal government.

"A unicameral legislature would solve this problem because it would be able to act fast enough to keep the power in the legislature.

"You can slow down legislative sections in the interest of conservative deliberation but if you do, the power will shift out of the legislature to the other branches or to the federal government."

## Unicameral Set-Up

"The proposed unicameral legislature would result in one legislative body, the Senate," House stated.

"It would reduce the number of legislators from a minimum of 120 members to 90," he said, "and from a maximum of 150 to 105 members.

"All the senators would have four year terms as they do now.

"Revenue bills would no longer originate in the House, of course, but would be presented to all the members at once.

"Nothing else is changed by unicameralism."

## Advantages

"A unicameral legislature would be

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"The constitution protects individual citizens against the power of the government by specifying what the government is permitted to do and what boundaries it must not cross.

"A government may do only that which the constitution permits; that which is not explicitly permitted is forbidden."

--John Hospers in "Libertarianism."

cheaper than a bicameral legislature," stated House. "But not much cheaper; the quality of legislation is the key test.

"Unicameralism would eliminate conference committees. Many times conference committees seem to come near the end of legislative sessions.

"When the bill comes back for a vote there is little time for deliberation. It's either pass it or throw it out and wait for the next session.

"Deliberation on a bill should take place on the floor with all members present. The peak of the Nebraska unicameral legislative sessions comes in the middle of the session rather than at the end so there is more time to look at the final bill."

## Easier to Watch

"Also, a unicameral legislature is easier for the public to keep track of," continued House. "Citizens have fewer people to watch and there isn't confusion between bills introduced in both the House and Senate.

"It's also easier to fix responsibilities in a unicameral legislature. Actions of the delegates are more visible and the people can watch what their senators are doing.

"If bicameralism is an improvement over unicameralism -- why not go to tricameralism? The more legislative bodies, the more confusion and the slower the legislative processes."

"In early America, John Adams favored bicameralism to protect property rights," said House. "Ben Franklin favored unicameralism because he reasoned that checks among members of one legislative body would be as effective as checks between two bodies. The one-man-one-vote decision removed Adam's argument so that Franklin becomes more persuasive."

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"The Bill of Rights was not directed against private citizens, but against the government -- as an explicit declaration that individual rights supercede any public or social power."

--Ayn Rand in "The Virtue of Selfishness."

## Statement of Purpose

# Preamble Is Criticized

By R. L. Ames

The preamble is one portion of the constitution which has, to date, escaped the attention of almost everyone.

Yet the preamble is an integral part of any constitution, according to one man who holds a degree in philosophy.

"Historically, a preamble has served as a brief introductory statement offering the reason for and intent of the document which follows," he said.

"In journalism, it would be comparable to the opening sentence -- the lead it's called isn't it? -- in an article," he continued.

### Offers Example

"For example," he said, "let me quote you the preamble from the constitution set forth in Michael Oliver's book 'A New Constitution for a New Country':

"This Constitution is founded on the principal that the only true function of government is to protect persons and entities from force and fraud, and that this government is to be limited to this function only."

"This is a concise clear statement of the underlying principle and intent of the constitution that follows it."

### Proposed Preamble

"By contrast, the preamble in the proposed constitution is cluttered with flowery, functionless phrases," the man continued, "and says virtually nothing about the intent of the document which follows."

The preamble in the proposed constitution is as follows:

"We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution."

"Aside from the fact that the punctuation of the sentence is atrocious," the man said, "there is, strictly speaking, no purpose stated for the constitution."

"Everything from the word 'grateful' through the word 'generations'

-- from a language analyst's point of view -- merely describes the emotional state of 'We the people of Montana.'

"Thus, omitting these adjectives, we are left with 'We the people of Montana do ordain and establish this constitution.'"

### Present Preamble

"Even our present constitution's preamble -- which, ironically, is shorter than the one in the proposed constitution being advertised so heavily as 'streamlined' -- has a stated purpose," the man went on.

He said, "The present preamble reads: 'We, the people of Montana, grateful to Almighty God for the blessings of liberty, in order to secure the advantages of a state government, do, in accordance with the provisions of the enabling act of congress, approved the twenty-second of February, A.D. 1889, ordain and establish this constitution.'"

"What is the reason for the constitution, according to this preamble? It is '... in order to secure the advantages of a state government...'"

### So What?

So what is one to conclude from all this?

"If I were just starting in to read the constitution, this preamble would arouse in me a certain amount of skepticism regarding the quality and validity of the document to follow," the man said.

"The preamble displays shoddy

## Whose Opinion?

Many people are under the impression that the commentary accompanying the proposed constitution, in the publication put out by the Con-Con, is that of the Secretary of State.

Not so, replied Dorothy Eck when asked by a member of Common Cause at one of their recent meetings.

"Actually, it will have our opinion, that is, the Con-Con staff's," the convention delegate said.

Mrs. Grace Bates, another Con-Con delegate, confirmed this, saying, "It was written by Convention members."

workmanship and a lack of knowledge, not only of sentence structure but of what constitutes a preamble," he continued.

"As it is," he said, "I have had the opportunity to read the entire proposed constitution and my suspicions were confirmed."

### Function of Constitution

"A constitution is intended to protect the people from the government by limiting the power of government," he explained.

"And in this sense, the proposed constitution is vastly inferior to the present constitution," he said. "The proposed constitution grants even more power to the government than the present one does."

"The delegates are now busily engaged in trying to convince us that the proposed constitution is intended to make government more responsive to the people."

"Well, the delegates are to be commended for their good intentions, but we can't condone their ignorance."

"The fact is, the proposed constitution falls far short of the present constitution in fulfilling the function of a constitution."

"So, in a way," he concluded, "I suppose the preamble does serve as an adequate introduction to the proposed constitution:

"The preamble doesn't fulfill its function and neither does the proposed constitution."

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"If the purpose of government is to provide systematic enforcement of rules, where does the authority come from?"

"The consent of those whom it governs."

"However, the people can consent to delegate to the government only the type of force which they, as individuals, have the right to use -- retaliatory force, that is, force which is used in response to a violation of a right."

---

--Joyce Jones in "Citizenship Education."

Dye Expresses View

# Diverting Highway Funds

Montanans will be hurt if the proposed constitution modifies the law in the old document to allow the legislature to divert certain highway funds, states Robert F. Dye, state chairman of the Montana Highway Users Federation.

The harm will be felt by Montanans in general and the rural people in particular.

"The time is approaching when federal funding will become available to the state," explains Dye, "and now we are thinking of opening our highway funding for other purposes.

"We must have cash in order to participate on a matching basis when the federal funding opens up and I'm afraid we won't."

The federal government has said in the past that when the interstate system throughout the country was completed its funds would be increased for primary and secondary roads.

"This is what Montana has been waiting for," said Dye, "especially Eastern Montana which has a bad road situation."

Rural people are going to get hurt when these funds are diverted, Dye said, "they have been waiting all these years for their roads."

## How It's Done

The proposed section of the constitution permits diversion of earmarked funds to purposes other than highways.

All that is necessary is that each house of the legislature approves such expenditures by a three-fifths majority.

"I have been in the state legislature for eight years now and I know how easy it is to get a three-fifths vote," commented Dye.

When the end of the session approaches, the legislators are exhausted from wrestling with budgeting problems and "dipping into the highway funds will be an easy solution," says Dye.

In addition, the use of the funds has been expanded to include local government roads, highway safety programs and driver education programs.

## Convention's View

It has been reported that the convention thought that the time would

come when highway funds would no longer be needed or at least their need would be reduced.

To this end they thought earmarked funds should be allowed to diminish.

"All the legislature has to do, if the need for highway funds is lessened, is to reduce the gas tax," commented Dye. The gas tax supplies 65 percent of the highway revenue.

## Upholds Highway Tax

"The highway tax is the only one you get back of all the taxes you pay," says Robert Dye. "You pay taxes for welfare costs.

"Yet, you may never draw on welfare.

"The more you use the highways the more it costs you in taxes. The less you use the highway, the less you pay in taxes."

As an example of earmarked funds, Dye cited the new car sales tax which was passed when the state's interstate system was being planned. When federal funds became available there wasn't enough income so the used car sales tax was passed. Now these funds are not earmarked.

The total highway user tax payments total about \$43,326,695.

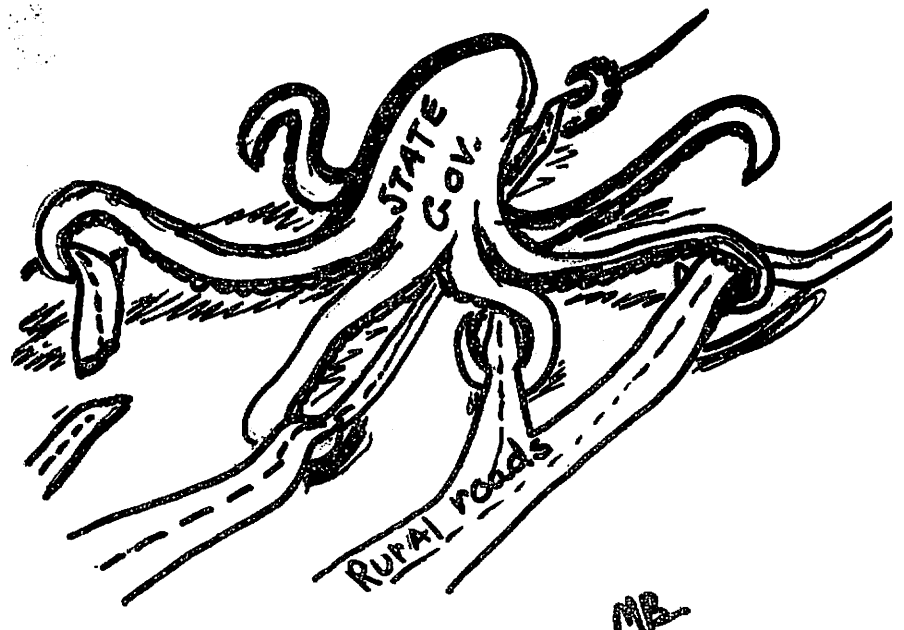
These taxes come from the following sources:

- Motor fuel taxes, \$28,535,830.
- Motor vehicle taxes, \$6,989,385.
- Registration (license plate), \$4,237,133.
- Drivers' licenses, \$858,460.
- Parking fees, \$728,479.
- Motor carrier fees, \$727,755.
- Miscellaneous registration fees, \$675,414.
- Fines and forfeitures, \$574,239.

## Better Highways

"It should be kept in mind," stressed Dye, "that the legislature appropriates the money for highways and the Montana Highway Users want more highways for the dollars."

The Highway Users Federation is composed of such organizations as the Montana Truckers Association, the Montana Farm Bureau, the Montana Association of Rural Mail Carriers, the Montana Automobile Dealers Association and the American Automobile Association.



## Bozeman High Teachers . . .

# Approve New Document

By Mary Pickett

John Free and Richard Corne, Bozeman Senior High School government teachers, have recently expressed their approval of the proposed Montana constitution.

They have studied the present and proposed constitutions and the arguments for and against both documents.

Free expressed his approval of the proposed charter by saying, "The proposed constitution eliminates the difficulties of the present constitution.

"It (the proposed constitution) provides more latitude for the representatives of the people while at the same time extending and expanding full rights of the people.

"It also makes office holders at both the state and local levels more responsible to their constituencies."

### More Responsive

He added that the proposed constitution requires officials to be more responsive to the people.

"One concern of some voters has been that the legislature is given too much power in the proposed constitution because of the use of wording such as 'as provided by law' or 'the legislature shall approve'," said Corne.

An actual count of the number of times these words are used reveals that they appear more times in the present constitution than in the proposed.

"If a state government is to include a legislative branch, then it must be given some power or it would be useless to have it at all," he concluded.

Both teachers agreed that, while the proposed constitution does give the legislature more power, the people of Montana have been given more checks on their representatives which prevent the legislative branch from doing something the voters do not want.

"The proposed constitution guarantees that the people can remain constantly informed about what is happening in the legislature," said Free.

### Legislative Information

He listed several items, included in the proposed constitution but not in

the present one, which emphasize the people's right to legislative information.

"First of all," he said, "the single member district provided by the proposed constitution insures better communication between officials and their constituency.

"The right to know section, the open committee provision and the fact that all votes of the legislature on substantive questions must be recorded and made public enables citizens to find out about issues and how their representatives are voting."

### Foundation of Document

Free felt that Section 2 of the Declaration of Rights of the proposed constitution, which states that "the people have the exclusive right of governing themselves", is the foundation of the document and sets the mood for the rest of it.

The privilege of the writ of habeas corpus can be suspended in case of rebellion or invasion.

The proposed constitution states that it can never be suspended.

Free pointed out that the executive branch has also been improved by the proposed document.

"For example," he said, "the governor and lieutenant governor file for election on the same ticket.

"In addition, the lieutenant governor doesn't preside over the Senate which would enable him to do something more useful."

Free and Corne then discussed other objections which have been raised about the proposed constitution.

### Water Rights

One item which has concerned area residents has been the water rights section of the proposed constitution.

"While retaining the present constitution's provision dealing with the use of water, the proposed document contains a brand new guarantee," Free said.

The added paragraph, referred to by Free, states, "All existing rights to the use of any water for any useful or beneficial purpose are hereby recognized and confirmed."

For those worried about more state power in the water rights issue,

Free said that "the proposed constitution would force any jurist to rule in favor of the people as opposed to the state in any litigation arising from the water rights section."

### People's Power

In response to the charge that the proposed constitution would enable local bodies of government to usurp power of the people, the teachers enumerated the following safeguards which prevent this from occurring:

(1) The proposed constitution provides the initiative on both local and state levels.

(The present only provides it on the state level.)

This means that the voters could override an unfavorable decision of a city council or county commission.

(2) People must vote on local government structure within four years of the ratification of the proposed constitution.

(3) Local governments must be reviewed every ten years.

(4) There will always be courts to challenge decisions made by local governments.

(5) People elected to county and city governments are people the voters know.

### No Limit

There have also been some objections to the fact that the proposed constitution does not limit public debt or taxation.

"There are checks on the state government included in the proposed constitution which prevent it from creating a debt larger than what the voters want," said Corne.

"The legislature must authorize a state debt by a 2/3 vote of its members," he said.

He added that "a state debt can't be created because appropriations exceed anticipated revenue.

"Also, appropriations themselves must not exceed anticipated revenue."

Corne also pointed out checks on the taxing power of the legislature.

The proposed constitution provides for independent appeal procedures for tax grievances, something not available in the present constitution.

(continued on following page)



# Grace Bates Speaks . . .

By R. L. Ames

Mrs. Grace Bates was asked recently to give her views on the Revenue and Finance article in the proposed constitution.

"Most of the articles passed with very heavy majorities," Mrs. Bates noted. "The final vote on the Revenue and Finance article had the smallest majority -- 68 - 28."

## No Definitions

Mrs. Bates was asked why the delegates decided to insert the clause permitting the legislature to grant tax exempt status to any class of property it wished to in addition to the listed tax exempt classes.

"At first I had reservations about doing this," Mrs. Bates said.

But, she went on, the reasoning was that something could come along that didn't fit any of the definitions.

She cited an example in Clearfield, Utah, where a former Army supply depot was converted into a free port distributing center.

Such a center provides a place for large machinery and implement companies, for example, to stockpile their goods.

By providing such storage places, companies are able to keep more goods on hand for their customers without having to order it out of places like Minneapolis, Denver, etc.

"No such thing exists in Montana," said Mrs. Bates, "and if one were to be created, it would not be granted tax exempt status under the present constitution because there is no provision for it."

## Highway Revenue

Mrs. Bates expressed her views on the section of the proposed constitution which permits highway funds to be diverted to purposes other than highways.

Such a diversion would require the approval of 3/5 of the members of the legislature.

"I would've preferred that, if they didn't need as much money for the highways, they reduce the tax," said Mrs. Bates.

"However," she continued, "I think the committee also wanted to make the highway commission more

accountable, and this was one way to do it."

## No Debt Ceiling

The proposed constitution also removes the \$100,000 ceiling on the amount of money which the state may go into debt.

"The removal of the debt ceiling was approved 67 - 28," noted Mrs. Bates.

"The \$100,000 figure was a farce," she continued. "You could not even build a single university building for that amount."

"The debt limit was also deleted because the type of revenue bonds required to substitute for debt -- the type the state has been using -- actually cost the state more than if the debt ceiling were deleted."

It was noted also that the Supreme Court recently ruled these bonds unconstitutional.

Although many people have expressed concern about deleting the debt ceiling, Mrs. Bates felt there was nothing to fear.

## Approve New Document

(continued from preceding page)

Corne added that "people the voters elect to the legislature must live under the same laws everyone else must."

"Therefore, the representatives are less likely to pass a tax the people don't want."

## Doesn't Limit

He summed up by saying, "The federal constitution doesn't limit the government's power to tax either."

Free said that "some people have expressed concern over the section dealing with imprisonment for debt."

"They are worried that, under the proposed constitution, the state government would have more power than it now does to imprison citizens for debt."

"This charge is unfounded because the section in the proposed constitution is exactly the same as it is in the present one."

"There seems to be a degree of concern about proposals made by the Constitutional Convention delegates

"Debt can only be approved by a two - thirds vote of the legislature or by initiative -- that is sufficient safeguard."

"A two-thirds vote is pretty hard to come by in the legislature."

## Removes 2 Mill Levy

Another limitation included in the present constitution but missing in the proposed constitution is the section prohibiting the tax rate to exceed two mills per dollar of valuation.

"This deletion worries some people," admitted Mrs. Bates, "but because of the state supreme court decisions in California and other states (Texas and Minnesota) requiring equalization of school funding, this may in the future require Montana to go to a state wide levy, rather than county and local levies, for education."

"I'm certain the state legislature will place limitations and guidelines on such funding."

"I really believe the concern for this provision being left out is unwarranted."

which were less than desirable, but didn't pass," said Free.

"Realizing that these inferior proposals didn't pass causes me to think more highly of the convention," he said.

## Amendments Slow

Addressing himself to the allegations that the Constitutional Convention was a waste because the present constitution could have been adequately amended, Corne said that "if the present constitution were to be amended sufficiently, it would take 50 or 60 years."

Free concluded by saying that he encourages "everyone not to be satisfied with the opinions of others, but to read the proposed constitution over and over for themselves before deciding how to vote on June 6th."

"The government was set up to protect man from criminals -- and the Constitution was written to protect man from the government."  
--Ayn Rand in "The Virtue of Selfishness."

# People Need

# 'Freedom of the Press'

The right-to-know section of the Bill of Rights of the proposed Constitution received its share of publicity at the convention.

This was largely brought about because the state's news media questioned the passage rather vehemently.

Among those protesting the disputed section was Mrs. Donna Brown, editor of the Gallatin County Tribune, who strongly denounced the passage as it now appears in the proposed Constitution.

To find out why Mrs. Brown spoke out as she did and what she now thinks of the right-to-know section she was interviewed by the Voice as follows:

**Voice:** What did you object to in the right-to-know section?

**Mrs. Brown:** I objected to the wording of the section which said essentially that people could have the right-to-know in regard to government agencies and public bodies **unless individual privacy should be more important.**

The section is worded like this: "No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivision except in cases in which the demand of individual privacy exceeds the merits of public disclosure."

**Voice:** What did you think was wrong with the wording?

**Mrs. Brown:** I thought it was arbitrary, undefinable, a contradiction to the concept of "rights," a possible infringement of freedom of the press, and unjust in its application.

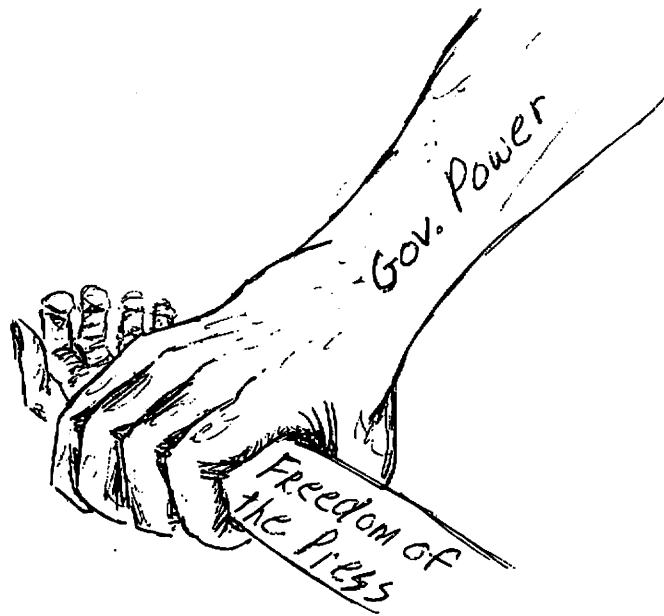
**Voice:** Would you explain further?

**Mrs. Brown:** What does "except in cases in which the demand of individual privacy exceeds the merits of public disclosure" mean?

Does it apply to private citizens and public officials alike?

Who is to determine when the demand of individual privacy exceeds the merits of public disclosure? The agency in question? The legislature? An appointed group? The courts?

**Voice:** What do you mean when you say it is a contradiction to the concept of rights?



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**Mrs. Brown:** A Bill of Rights is a citizen's protection against the government. Rights are firm, absolute concepts that are not subject to a legislature's whims. Obviously, the right-to-know section is not a firm, absolute concept. Authentic rights apply equally to everybody.

In fact, it is rather surprising that a right-to-know section would appear in the Bill of Rights. It is a rather limited section and seems oddly out of place there.

Today, we have legislation that covers public meetings. It may have its faults but it makes a great deal more sense to have it as a law than as a right in the Bill of Rights.

Its inclusion in the Bill of Rights shows that the concept of rights is misunderstood.

**Voice:** Why do you think the section unjust in its application?

**Mrs. Brown:** Arbitrary laws always bring injustice. If someone's individual privacy is great enough (according to someone's standard) then that person will not have his name and story printed.

But what about the person whose individual privacy is not quite great enough (according to someone's standard)? His name will be printed.

You have an unjust situation.

In the newspaper world you are faced with this problem at all times.

Someone is always telling you his case is special and it shouldn't appear in the paper. And it is special -- to him. But, in justice to the other persons who haven't come forth and pleaded their special causes you treat people alike **according to a firm standard.** And since you as a newspaper person are not God you print all names that appear on a public record and this becomes your standard -- treat people equally.

**Voice:** What did you think of the debate on the right-to-know section at the convention?

**Mrs. Brown:** I thought it was in serious error.

First, the delegates were at the convention to deliberate constitutional provisions.

This would lead a person to suspect that the delegates might be open to information from persons with views to offer -- persons experienced in the subject under consideration.

However, when the newspapers offered objections to the right-to-know clause they were immediately categorized as one of those nasty special interest groups grinding their own axe.

The newspapers approach was called stupid and block-headed in one

(continued on following page)

# Provides for Ag Dept.

By Korinn Walker

At a meeting, well attended by MSU administrators and faculty, Con-Con Delegates Richard Roeder and Dorothy Eck spoke about the proposed constitution during a noon hour meeting sponsored by the American Association of University Professors (AAUP).

During the course of the questioning period the delegates were asked, "What will the agricultural provisions be?"

Mrs. Eck responded to the inquiry stating that one of the primary provisions that directly affects agriculture is that which calls for a Department of Agriculture.

## Department of Agriculture

"All of the functions of agriculture shall be under that department," said Mrs. Eck, indicating that she felt that such a provision would have been better established by the legislature rather than as a constitutional provision.

"I think," she said, "that the agricultural people showed a more justified interest in the water right provisions.

"I think most farm groups are very happy with the water rights provisions as they were finally written.

"They were, however, concerned because in the original proposal there was a provision for establishing priorities, which would include recreation as a beneficial use.

"I think we all pretty well assumed that recreation is going to be a beneficial use, but having it written into the constitution was really disturbing to a lot of agriculture groups.

"We also ran into a lot of difficulties in how we can establish priorities in a constitution and still maintain flexibility.

"I really didn't like to see that article omitted but it was probably a very good thing that it was.

"There was also some concern about federalized administration and record keeping."

## Record Keeping

"I think we have to have centralized record keeping in order to meet some kinds of federal requirements," said Mrs. Eck, "but the provision is

very clearly stated that water rights will be maintained as the function of the lower courts.

"Agricultural groups were concerned that this might be turned over to a state engineer, but I don't think that that ever had really serious consideration.

"In the end I think all the farm groups were very well pleased with the way the article was written."

## Property Tax Equalization

Roeder then commented stating, "In the first place agriculture will retain the special levies for livestock -- that is given clear constitutional recognition.

"One thing that agricultural people will be concerned about is the revenue and finance article.

"Hysterically they are going to say 'Oh, my God, the state is going to turn to property taxation as the keystone

for state finance,' because we removed the two mill general fund levy.

"Well, if you want to see the statement look bad then I guess that is the way it is, but I don't foresee this.

"The revenue and finance article is not to tax farmers out of existence -- that is not the purpose -- what was anticipated here was the fact that cases involving school finance are going to be applied to Montana in the near future and the form this article takes is anticipating that and I don't think it is looking at the property tax to finance state government.

"On the other hand I think that agriculture interests are rightfully concerned about this article, because what it provides is property tax equalization. They suspect in their hearts that if we have property tax equalization that they are going to pay a little more in proportion to the city boys than they are now and they are probably right."

## 'Freedom of the Press'

(continued from preceding page)

instance by delegate Wade Dahood.

It is extremely fashionable nowadays to call anyone who has specialized knowledge on a subject a "special interest group." And this is done with the appropriate sneer to hint that the advice they are offering couldn't possibly be good -- it must come from someone who is impartial and generally knows darn little about the subject he is discussing.

**Voice:** You would say the newspapers were treated unfairly?

**Mrs. Brown:** I think the people were treated unfairly.

It has never been understood that freedom of the press is something very special in this country for the people.

It is a guarantee that the man on the street should have access to all kinds of information and can make his choices accordingly.

What newspaper is really going to profit from the right-to-know section?

**Voice:** Do you think a right-to-know section is vital to the Constitution?

**Mrs. Brown:** No, I don't -- not even one written as it should be.

A strong freedom of the press guarantee should be all that's necessary to a Constitution.

I think the idea of right-to-know is intriguing to a newspaperman and this is why it was endorsed originally by members of my profession.

But, when they took a second look at the wording they saw that they hadn't accomplished what they wanted but had probably hurt the freedom of press guarantee.

**Voice:** Will you vote for the proposed Constitution?

**Mrs. Brown:** Absolutely not. There are many other reasons I will not vote for this Constitution but the way the right-to-know section is worded and the fact that it exists is enough reason for me to cast a negative vote.

"I do not believe government can run any business as efficiently as private enterprise, and the victim of every such experiment is the public."

--Thomas E. Dewey

## Delegates

# Disagree with Crosby

By Korinn Walker

A very controversial figure during the Constitutional Convention was a lobbyist from Missoula, named Roy Crosby.

Crosby, who is avidly campaigning against the passage of the proposed constitution, was the subject of much discussion during a luncheon meeting at MSU recently, sponsored by the AAUP.

### Question Raised

The question was raised from a gentleman in the audience of Delegate Dorothy Eck, "I was approached downtown by a gentleman with two volumes, each about two inches thick, claiming that the whole constitution was bad.

"He leveled two principle charges. I haven't been through the whole thing, I probably never will get through it -- but one thing was that the model of the constitution was obviously bad because it was prepared by a group with which you are associated, the League of Women Voters.

"Secondly, he said that in effect we have signed away all of our rights to the legislature. Is there any basis whatsoever in the charge that our rights are in fact being handed over to the legislature by this constitution?"

### Eck Comments

Mrs. Eck responded stating, "I don't think so, I am aware of Roy Crosby and that he is well supported by people in Gallatin County.

"I understand that the Gallatin Taxpayers Association and the Gallatin Real Property owners or something support him.

"You know a lot of people try to dismiss him and I think he might be dismissed as being somewhat of a kook but he does work awfully hard at it . . . he is really kind of a nice little guy.

"He works on the philosophy that somehow there is a great conspiracy to wipe out our present forms of government.

"We ran into him first in preparing annexation laws. He thinks that the city tries to annex country adjoining land or cities and counties try to

work in cooperation with one another to perform some function jointly and this is really the first step in wiping out boundaries. The next thing you will get is states cooperating with each other and nations and you will end up with one world which to him is the ultimate in evil.

"At the Constitutional Convention, actually he was rather handy. I haven't got through this report but at least he told us at the end that he was very much pleased with the bill of rights committee. We weren't sure whether to consider this as a compliment or not.

"He was concerned with a statement in the constitution about the separation of powers which indicated the powers of the legislature, judiciary and the executive would be separated except as provided for in the constitution.

"This was directly from the old constitution."

"I don't think it is that kind of a threat," Eck continued, "I don't see any area where the legislature has any more power over the judicial and over the executive than it had before, but there are some cases where its power is strictly curbed.

"I don't know how much we will hear from Crosby. I know that he works quite extensively in Gallatin County and I think that if any of you are particularly interested in countering the arguments from him that the one that has gone into it

most deeply is Mason Melvin.

"He has gone through this literature and documented it quite well."

### Roeder Responds

Roeder also responded to the question, saying, "I am very sensitive about this man.

"He appeared before the executive committee when we had one of our hearings, and he charged that the author of proposal 77, which happened to be me, was engaged in a plot, the end of which was to subvert the civil liberties of the state of Montana by bringing about a military despotism.

"Why did I do that? Why did I change that word in writing proposal 77? Well, I wanted to make it clear so no one could possibly misunderstand that the air national guard is also subject to civilian control and the governor is commander in chief of it as well as the militia.

"But oh no, this man has to see my efforts as part of a long train of mechanisms to bring about some dastardly end. I resent that."

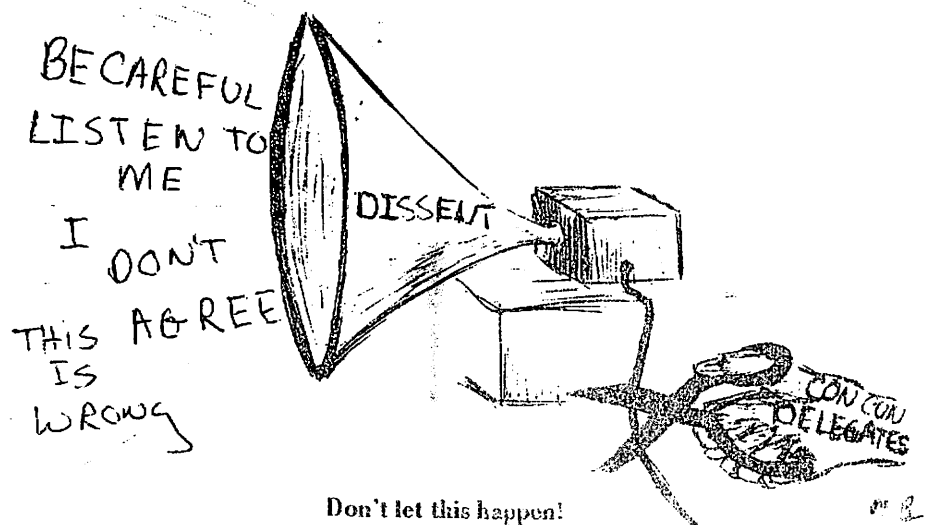
### League of Women Voters

Mrs. Eck stated, ". . . about the League of Women Voters writing all the research material.

"This doesn't really bother me at all. We have been accredited with having absolutely, by far the best research material available of any convention.

"Also during one of our hearings

(continued on following page)



## Educators

# Disagree on Constitution

By Korinn Walker

At a meeting of the American Association of University Professors (AAUP) on the MSU campus recently Mrs. Dorothy Eck, Con-Con Delegate from District 11, addressed the group concerning the educational provisions in the proposed constitution.

Mrs. Eck remarked, "I think that education was very well represented at the convention.

"Many groups were over there making presentations. I think the student groups, such as the Montana Association of Student Presidents, were perhaps the most effective.

"The two items that will affect the education, the Board of Regents and the Board of Public Education, which sit together as a Board of Education.

"There was a lot of disagreement over there and I think it is something that educators need to keep in mind, because a lot of apprehension hinged in the area of vocational education.

"I don't think that they are as threatened as they seem to feel, but I think that we are going to have to watch out for them in the next few years to make sure they aren't stepped on."

### Commissioner of Education

"Another new provision is the Commissioner of Education -- this is one," said Mrs. Eck, "that I was especially pleased with.

"Here again you don't know what a Commissioner of Education is going to mean.

"He could be an executive secretary. The way the proposal was originally written, there was going to be an executive officer named by the Board of Regents.

"It was changed to a Commissioner of Education feeling that this person would be equal in status to the Superintendent of Public Instruction and they would each serve in ex officio capacities on the board in which the other one was responsible.

"So, what he will be is really left up to the Board of Regents to decide. I think that one point that the delegates felt very strongly about is that they wanted a unified educa-

tion program at the higher education level and they didn't feel that they have been getting it through the present Board of Regents. They don't really feel assured that they are going to get it under the new set up."

### Past Legislators

Mrs. Eck further commented, "One group that is really, or at least were for a short period of time, were unhappy with what we did with the education article were the former legislators who were around.

"I think that they may be placated and I don't really think that what we did was all that dangerous, but the Board of Regents is really given complete powers in academic, financial and administrative matters.

"They are subject to the same audit as other state agencies, of which no one complains about.

"But I think that the university and its personnel really need to be aware of the fact that there is some real hostility among these legislators.

"I think it would be well worth the university's effort to bend over backwards and open up completely its accounting systems to their audit.

"I have been through this during

the legislative term too and I am not sure whether they came over really feeling that if they put a little pressure on we would go back and change.

"They arrived a couple days after we finally passed this so that they were late but we have had comments from a couple of them that on this one position we took that they felt that the whole constitution ought to be killed.

"I don't think that they will think that for more than a couple days, but I do think that it is something we need to be aware of.

"It still depends on the legislature for funds even if they don't put their fingers in its accounting system."

### Roeder Comments

At the same meeting Delegate Richard Roeder addressed the group stating, "I don't quite share Dorothy's enthusiasm for the education article, because I cannot see an elective Superintendent of Public Instruction being a very obedient administrative office for an appointive Board of Education.

"I fought the continued election of the superintendent throughout the convention and I will continue to take that position."

## Disagree with Crosby

(continued from preceding page)

Crosby said that he had data showing that the League of Women Voters also writes all the material for the National Municipal League, and I said, 'Well, thanks,'

"His reasoning is that we quote one another. He seems to think that this means we have some sort of a plot and we are really the ones directing all these organizations."

### Signing Away Rights?

Roeder then further responded to the question, "Are we signing away all our rights to the legislature?"

"In no sense," he said, "is the separation of powers being abridged or amended by the proposal.

"We are going to have to rely on the legislature in this sense: take the revenue and finance article.

"This is one of the most far-

reaching changes I think that came out of the convention.

"What is has changed is such things as specific debt limitations, mentioned in the constitution in dollar amounts on local government and on state government.

"It has removed a two mill levy and so forth, now it is up to the legislature as directed by law to establish debt limits and taxation limits and so forth.

"In this sense, yes, you are dependent on the legislature but in fact that is as it should be in a democratic system.

"As a matter of fact that is as it has been in the past because the constitutional details that we are proposing to omit are allusory in their protective quality.

"Now Crosby would never understand that but I think you do."

## Changes in Reapportionment

# Single Member Districts

Two primary changes were enacted in the proposed constitution in regard to reapportionment and representation.

The first change is that the legislature is no longer required to reapportion itself.

This is now in the hands of a commission.

The second significant change is that the state will be divided into "single member districts."

### The Commission

If the new constitution is adopted, the commission (provided for in Article V, Section 14) will be established in the 1973 legislative session, explains Bob Taylor, MSU geographer who worked with convention delegates.

The commission will be composed of 5 citizens.

The majority and the minority leader of the State House of Representatives will choose two citizens. The Senate majority and minority leaders will choose two citizens for the commission.

This total of four commission members then choose a fifth member (the chairman) within 20 days.

If they cannot agree upon the fifth member a majority of the Supreme Court will select the fifth man.

### An Unbiased Commission

"These provisions provide an unbiased commission," says Taylor, pointing out that the majority and minority leaders represent different political parties in equal proportion.

Also, no public officials can serve on the commission.

The life of each commission is limited. Taylor points out that the first commission is responsible for reapportionment by 1975.

It will then be dissolved and a new commission appointed at the state legislative session preceding a federal census. (1980).

After the commission is formed, it must draw a reapportionment plan. This plan goes to the legislature within 30 days.

After considering the plan, the legislature returns it to the commission with their recommendations.

"This gives the legislature time to

express its opinions," comments Taylor.

The legislature can't kill the plans, says Taylor, adding, it is hoped that the commission, having been appointed by the legislature, can respond to legislative wishes, observe the federal laws, and at the same time eliminate the time and money expenditure on a topic of such a personal nature to a politician.

The commission then proceeds to file the plan which becomes law.

### Single Member Districts

A single member House of Representatives and a single member Senate have been provided for in the new constitution.

"This concept is popular with the people," says Taylor. "The single member district is the most equitable form of representation."

What does "single member district" mean?

It means that, for example, if the constitution is passed, in District 11, Gallatin and Park Counties could have six separate districts with six separate elected representatives.

Two of the adjoining house districts will combine for a senate district which shall elect one senator.

The districts should be nearly equal in population.

What size will the legislature be under the new constitution?

It provides in Article V, Section 2, that the size of the Senate should

be between 40 and 50 senators and the House should have between 80-100 members.

"We are trying to restrict the size of the legislature," says Taylor. "The House is already full."

### Past History

Reapportionment has been around a long time, says Taylor, but the Supreme Court decision of 1964 made it necessary for the states to reapportion both the House of Representatives and the Senate on a population basis.

Previously, only the House had been designated for reapportionment.

This eliminated the "one senator per county" concept.

Also, when population is the criteria for reapportionment county boundaries must often be ignored.

The 1967 state legislature adopted the apportionment plan suggested by a federal district court earlier.

But "to expect a man to vote himself out of office or forget his party affiliations may be asking too much; at least, historically in most states it was asking too much" says Taylor.

Consequently, reapportionment was slow at the state level.

However, the guidelines were there and "the Con-Con delegates had to follow federal law," points out Taylor. "Most of their actions in this field were in response to federal dictates."

## The Old and The New

What are the primary differences between the old and proposed constitutions in regard to apportionment?

--In the old constitution, the legislative assembly was given the power of reapportionment. The proposed constitution deletes this power of the legislature.

--In the old constitution, the districts could be altered as public convenience required. The proposed constitution provides that the districts be redistricted after each census.

--The old constitution stated that if the U. S. Constitution was changed to

provide for apportionment of one house on factors other than population, the senate should be apportioned on the basis of one senator for each county.

This section has been deleted in the proposed constitution.

What has remained the same between the old and proposed constitutions regarding apportionment?

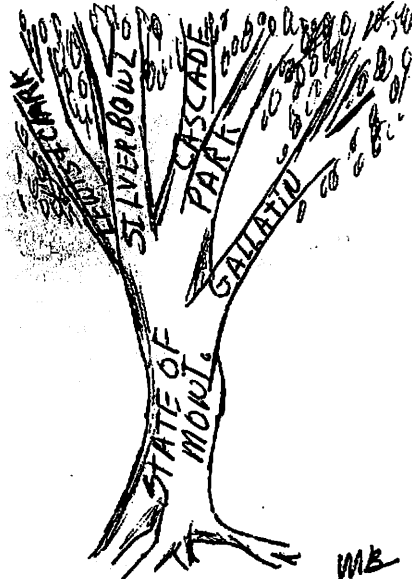
--Both constitutions state that members of the state legislature shall be on the basis of population.

--The districts shall be contiguous and as compact as may be.

# County-State vs. State-Federal

## What Is The Relationship?

The relationship between counties and the state is widely misunderstood. Similarly, the relationship between



The counties are branches of state government. MB

the states and the federal government is not understood, says Bob Taylor, MSU geographer.

The county is an arm of the state government and is subordinate to the state.

"There is nothing sovereign about a county," explains Taylor.

However, a state has limited sovereignty guaranteed by the federal government.

The U. S. Constitution recognizes the state as a sovereign entity with the federal government delegated only the powers that the states are denied by the U. S. Constitution.

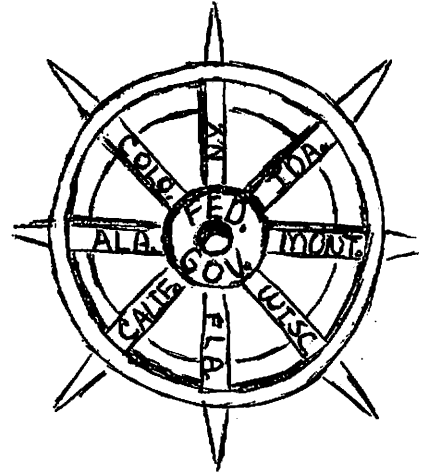
This structure explains why the counties can be reapportioned on the basis of population and why the states cannot be required to do the same

"The Constitution is a limitation on the government, not on private individuals."

--Ayn Rand in "The Virtue of Selfishness."

thing at the national level.

The U. S. Constitution will not permit this restructuring, says Taylor.



The states hold a position equal to the federal government. MB

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# To Protect Man

It's the truth! It's seldom mentioned! And yet it should be said again and again!

The constitution is written to protect man from government.

Or to put it another way:

The constitution doesn't give government power (although it has been used this way) but it does provide the citizen protection against the government.

And this is one of the fundamental basic principles people should keep in mind when they consider any form of constitutional change.

## Rights Aren't Gifts

You see, the government exists to protect your rights -- those rights which are a part of your nature and not given to you by government.

Now, if a right is yours by nature, obviously the government can't give it to you.

But the government can take your rights away. Remember your first and primary right is a right-to-life.

This means you can take the needed actions to support your life, and to enjoy your existence.

This is why it is said that a man has the right to life, liberty and the pursuit of happiness.

By the way, you need a right-to-property although this concept has been increasingly ignored

in past years. This right means you can work for that which you need to exist but you can't be guaranteed these things.

## Ask Yourself

When trying to find the answer to such questions as "whether the state constitution should be changed or not" ask yourself if such changes would protect your rights or violate them.

Some possible questions to consider would be:

--The government is supposed to guard your freedom or liberty, is it doing this?

--It is supposed to clarify right or wrong in human relationships in an objective fashion -- is it doing this? or is it passing non-objective laws whose interpretation is left to bureaucrats?

--It is supposed to protect you from people who initiate force -- is it doing this?

--The people delegate their right of self-defense to the government, which is supposed to use force only in retaliation -- never initiating it. Is this the way it's being used?

The constitution is a limitation on government and not on private individuals. It doesn't outline the conduct of private individuals, only the conduct of government.

Consider the proposed constitution well. If it doesn't meet the above requirements you shouldn't adopt it.

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## Revenue and Finance

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"We are a long way from five percent now," Winsor said wryly.

Along the same lines, Winsor noted, "When the state income tax was initiated here, it was billed and sold to Montanans as a replacement for property tax, and today the property tax remains -- higher than ever.

"If you give the state an inch, they'll take a mile. They can always find excuses to spend money.

"Frequently, additional 'rights' get created to protect special interest groups -- and the taxpayers have to pay for them."

### Unlimited Power

When the original income tax was proposed, according to Winsor, a Su-

preme Court Justice opposed it on the grounds that, as Winsor put it:

"The unlimited power to tax means the citizen is going to get taxed without limit.

"The power to tax is the power to destroy. Make it unlimited and you have unlimited destruction."

Other states without limits on taxation are bankrupt, Winsor contends, citing Michigan as an example.

### Limited Income

"We've already got a horrible problem in this state," Winsor said, "in that many people on social security are already spending almost their total income for property taxes.

"The answer is not to increase social security, over which Montana has no control, but to establish a reasonable tax system."

Winsor felt that a stronger limit, not removal of the limit, should have been placed on state and local indebtedness.

He noted that, even with limits, the school budgets have been rising faster than inflation.

### California Courts

Winsor spoke briefly of the California Supreme Court ruling that local taxes could not be used for schools.

This ruling has been used, with some validity, to justify some of the changes, said Winsor.

"However," he pointed out, "that was a ruling of a California court, concerning the California constitution and California schools.

"It has not been tested in the U.S. Supreme Court, nor in Montana by our state supreme court.

"So there is no justification, really, to apply it here."

"Furthermore," Winsor added, "there are other ways of doing the same thing -- by constitutional amendment, for instance.

"This was apparently totally overlooked."



# Revenue and Finance

By R. L. Ames

Tom Winsor, Bozeman businessman and candidate for the state senate, says he advocates the defeat of the proposed constitution because of the Revenue and Finance article.

"I do think there are some fine points raised in the proposed constitution," Winsor told the Voice, "and if it fails to pass, I think these might be raised again as amendments to the present constitution.

"But because of the Revenue and Finance article in the proposed constitution, I can do nothing but fight for the defeat of this document."

Winsor went on to explain his objections to this article in the proposed constitution.

## Taxes High Already

"According to the U.S. Department of Commerce, Montana ranks second highest in property taxes, third highest in income tax and 34th in income," Winsor explained.

"In the light of those figures, taking off the taxation and debt limits just doesn't make sense," he said.

Winsor continued, "The present constitution guarantees a maximum cost of government at both the state and local levels.

"If that cost was ever exceeded, the people's approval had to be given."

## Bondable Debt

The present constitution places a debt limitation of \$100,000 on the state.

Winsor pointed out, "Although it's true that, since 1952, the state has been getting around the debt limit with bonds, the supreme court recently ruled that this method was unconstitutional.

"So they won't be able to do it anymore."

"I will acknowledge," said Winsor, "that \$100,000 is a pretty low limit.

"However, rather than remove the limit altogether, why didn't the Con-Con merely raise the limit?

"It is necessary to put arbitrary limits on government -- or else, as history has shown, they never know when to stop building monuments to themselves."

## Two Mill Levy

Winsor went on to note that the proposed constitution deletes the present prohibition restricting the rate of taxation to no more than two mills on each dollar of valuation without the people's approval.

"The delegates deleted this section," he said, "but they never mention having done so."

"I don't know why they had so little faith in the people," Winsor went on. "If a project was good, the people would approve it.

"With the kind of self-control the legislature has shown to date, I have every confidence that, if the proposed constitution is passed, Montana will soon rank first in property and income tax."

"Only one government has an unlimited power to raise money," Winsor continued, "and that is the federal government.

"Even at the federal level, the practice is questionable; however, it can do this, because it has the power to mint money.

"Every bit of money that the state spends, however, comes out of the taxpayers' pockets."

## Definitions

"Also, in the proposed constitution, they've left out definitions of the types of property," Winsor said.

"According to the proposed constitution, the legislature can exempt from taxation any class of property it so desires," Winsor continued, "but they never define any class of property."

"What they've done," he said, "is cut down people's control over government.

"Worse, because it is taxation in this case, they've cut down every individual's control over his own destiny."

## Highway Funds

Winsor said that in loosening up the highway funds, which the proposed constitution does, the delegates have set a precedent.

"These are special use taxes," he said. "Truckers, for example, pay these taxes for the support of the

roads and they want to see more roads for their money."

"And in the proposed constitution," he added, "there is no prohibition against doing this sort of thing with other classes of taxes.

"For example, homeowners could be taxed heavily to support a state monopoly."

## Supposed to Protect

"A constitution is supposed to protect people from government," said Winsor, "and, in my opinion, this one doesn't.

"First they took the lid off state debt and then, with the new initiative and referendum clause, they forbid the people to raise questions on financial matters."

Winsor also spoke of the section in the proposed constitution which permits local government units (counties, cities, school districts, etc.) to combine powers and functions.

"A local government could surrender its powers to another," he said. "And that could include the power to tax."

Winsor offered the hypothetical example of School District No. 7 combining with the City of Great Falls. Great Falls, he said, would inherit School District No. 7's taxing power, but it would not necessarily use the district's tax revenue for improvements in the district's schools.

"Even though the residents in School District No. 7 might be permitted by the courts to vote on the use of their funds, they would be heavily outnumbered by the residents of Great Falls," Winsor noted.

## Imaginary Horribles

Winsor admitted that the above example could rightly be termed "a parade of imaginary horrors."

But the same was said of Senator Lodge, Winsor noted, when the first federal income tax was initiated and Lodge warned, "Mark my words, the income tax will soon exceed five percent."

(Senator Lodge was a Massachusetts senator at the time the first income tax was initiated.)

(continued on next page)

# To Protect Man

It's the truth! It's seldom mentioned! And yet it should be said again and again!

The constitution is written to protect man from government.

Or to put it another way:

The constitution doesn't give government power (although it has been used this way) but it does provide the citizen protection against the government.

And this is one of the fundamental basic principles people should keep in mind when they consider any form of constitutional change.

## Rights Aren't Gifts

You see, the government exists to protect your rights - those rights which are a part of your nature and not given to you by government.

Now, if a right is yours by nature, obviously the government can't give it to you.

But the government can take your rights away.

Remember your first and primary right is a right-to-life.

This means you can take the needed actions to support your life, and to enjoy your existence.

This is why it is said that a man has the right to life, liberty and the pursuit of happiness.

By the way, you need a right-to-property although this concept has been increasingly ignored

in past years. This right means you can work for that which you need to exist but you can't be guaranteed these things.

## Ask Yourself

When trying to find the answer to such questions as "whether the state constitution should be changed or not" ask yourself if such changes would protect your rights or violate them.

Some possible questions to consider would be:

--The government is supposed to guard your freedom or liberty, is it doing this?

--It is supposed to clarify right or wrong in human relationships in an objective fashion -- is it doing this? or is it passing non-objective laws whose interpretation is left to bureaucrats?

--It is supposed to protect you from people who initiate force -- is it doing this?

--The people delegate their right of self-defense to the government, which is supposed to use force only in retaliation -- never initiating it. Is this the way it's being used?

The constitution is a limitation on government and not on private individuals. It doesn't outline the conduct of private individuals, only the conduct of government.

Consider the proposed constitution well. If it doesn't meet the above requirements you shouldn't adopt it.

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## Revenue and Finance

(continued from preceding page)

"We are a long way from five percent now," Winsor said wryly.

Along the same lines, Winsor noted, "When the state income tax was initiated here, it was billed and sold to Montanans as a replacement for property tax, and today the property tax remains -- higher than ever.

"If you give the state an inch, they'll take a mile. They can always find excuses to spend money.

"Frequently, additional 'rights' get created to protect special interest groups -- and the taxpayers have to pay for them."

### Unlimited Power

When the original income tax was proposed, according to Winsor, a Su-

preme Court Justice opposed it on the grounds that, as Winsor put it:

"The unlimited power to tax means the citizen is going to get taxed without limit.

"The power to tax is the power to destroy. Make it unlimited and you have unlimited destruction."

Other states without limits on taxation are bankrupt, Winsor contends, citing Michigan as an example.

### Limited Income

"We've already got a horrible problem in this state," Winsor said, "in that many people on social security are already spending almost their total income for property taxes.

"The answer is not to increase social security, over which Montana has no control, but to establish a reasonable tax system."

Winsor felt that a stronger limit, not removal of the limit, should have been placed on state and local indebtedness.

He noted that, even with limits, the school budgets have been rising faster than inflation.

### California Courts

Winsor spoke briefly of the California Supreme Court ruling that local taxes could not be used for schools.

This ruling has been used, with some validity, to justify some of the changes, said Winsor.

"However," he pointed out, "that was a ruling of a California court, concerning the California constitution and California schools.

"It has not been tested in the U.S. Supreme Court, nor in Montana by our state supreme court.

"So there is no justification, really, to apply it here."

"Furthermore," Winsor added, "there are other ways of doing the same thing -- by constitutional amendment, for instance.

"This was apparently totally overlooked."

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## Private Schools . . .

# How Are They Affected?

By Korinn Walker

How do private schools view the education provisions in the new constitution?

For the most part Mr. Ellis Academy is quite satisfied, according to A. W. Robinson, principal of the Academy, and Ronald K. Russell, education superintendent of the Montana Conference of the Seventh-Day Adventists.

Robinson expressed concern only with Section 6 of the education article, which prohibits aid to sectarian schools from the state, but allows for federal funds which may be granted to the state for non-public education.

### State's Role

"If the state is merely going to act as an agency," said Robinson, "to pass these on without deciding to whom do they go and how much, then maybe this is alright, but if the state must become active in deciding how these funds will be dispersed, then I wouldn't be very much in favor of it."

"As soon as the state comes in and starts giving me money they can come along and tell me what to do."

"This negates, then, the purpose of a private school."

"We must be allowed to operate our school in conjunction with good education criteria but within our own philosophy and framework of education."

"We would forego the funding rather than have these strings attached."

### No Funds Accepted

In fact, Russell went on to point out that this is the policy of the Seventh-Day Adventist Church - federal funds of no kind should be accepted by their schools.

"The only area in which this might be considered," he said, "is when it is offered directly to the parent or student through income tax deductions or a voucher system, such as in California."

"But even here there is disagreement within the church."

Robinson extended this concern about tax funds being introduced into private schools, to section one, also,

of the article, which reads: "The quality of education opportunity is guaranteed to each person of the state."

"I suppose," he said, "that somebody could come along and say the state should give assistance to private schools to guarantee this equality."

"What I think they are talking about is the public school system, although it doesn't state 'public.'"

### Private Schools

He again expressed the need for the insured freedom of private schools, stressing, however, that if a person did establish a private or sectarian school, he had no right demanding funds to operate it from the government.

When asked if there were any constitutional recognition of private schools, Robinson replied, "Well I think it is given under the freedom of religion clause."

Would this apply, however, to private schools not associated with any specific religion?

"I think there is sort of a backdoor authorization of private schools," said Russell, "recognizing there will be that category, and deleting it from

state funding.

"There is, however, no article specifically recognizing private schools."

### Another Section

In Section 8 of the education article, it states, "The supervision and control of each school district shall be invested to a board of trustees elected as provided by law."

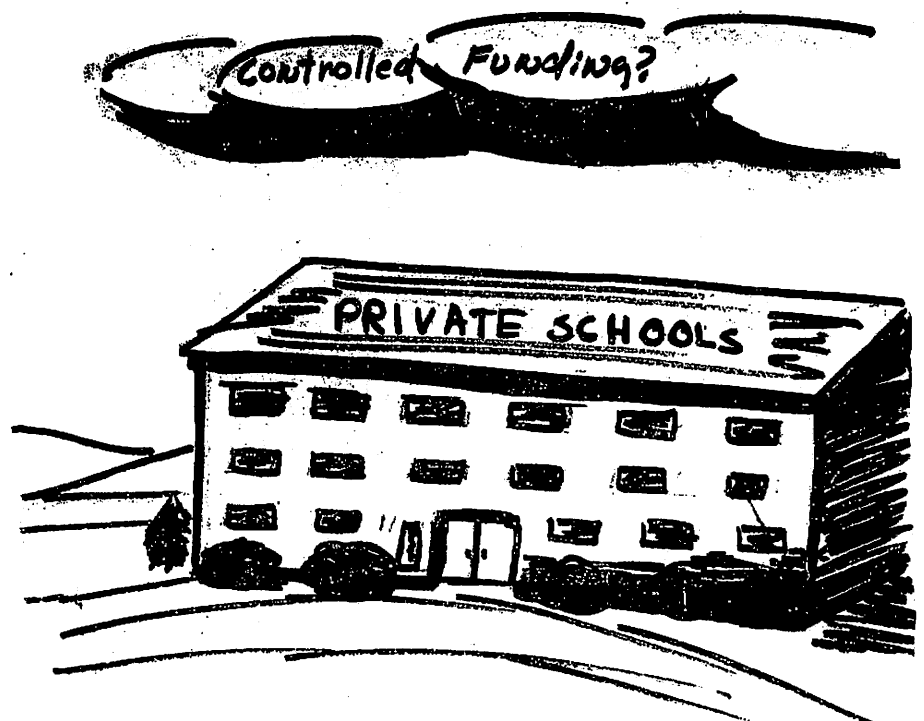
The question was asked: since the clause does not specifically identify "schools" as "public schools", do you think it is possible that this might be construed to mean all schools including private ones?

Russell replied, "There would be a problem, I suppose, although there is nothing there saying any school."

"In secondary education, we are already under administrative control as far as facilities, atmosphere and certification of teachers."

"If they ever hinted at control of curriculum, then I would be concerned."

Both Russell and Robinson stated that, in general, they were quite pleased with the new constitution's article on education.



# DEFINITIONS YOU SHOULD KNOW

## WHY DEFINE?

"Citizens cannot guard liberty well if they do not know how to define precisely what liberty is, what principles it stems from and what actions are required to maintain it.

"For example, does liberty mean the freedom to do anything one pleases or does it imply limitations and responsibilities?

"Does it stem from the concept of privileges or the concept of human rights?

"Will liberty be maintained by being exercised fully or by being curtailed from time to time?

"Questions of this sort can be extremely complex. The more clearly you understand the definitions of basic terms in politics and economics, however, the more quickly you can sort out the various aspects of a complicated issue." -- Joyce Jones in Citizenship Education.

**Authoritarianism:** The principle of government which advocates obedience to authority rather than individual liberty.

**Bicameral Legislature:** The law-making body of the U.S. federal government and all state governments (except Nebraska), composed of two houses, usually called the Senate and the House of Representatives (or Assembly).

**Checks and Balances:** A system provided in the United States Constitution whereby the powers of government are divided among three branches (legislative, executive and judicial); each branch can check the other two to prevent one branch from becoming too powerful.

**Constitution:** The Constitution is a limitation on the government not on private individuals -- it does not prescribe the conduct of private individuals, only the conduct of the government -- it is not a charter for government power, but a charter of the citizens' protection against the government. -- Ayn Rand in "The Virtue of Selfishness."

A constitution is usually a written document which defines the fundamental form, powers and duties of a

government, and the rights of the people whom it governs.--Joyce Jones

**Right:** A moral principle defining and sanctioning a man's freedom of action in a social context -- Ayn Rand in "The Virtue of Selfishness."

The concept of rights is based on the idea that every man is born with certain things to which he is absolutely entitled -- the right to his life, liberty, property and the pursuit of happiness. -- Joyce Jones.

**Liberty:** The absence of coercion by other human beings.--John Hospers.

**Statism:** The life of the individual is regulated and dominated by government. -- John Hospers.

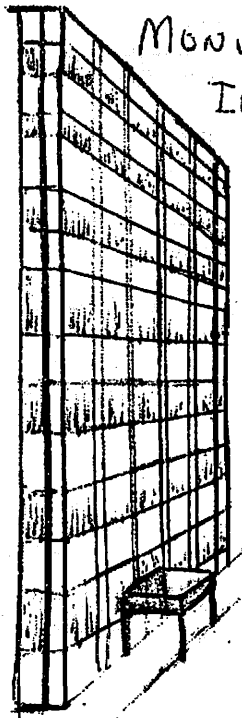
**Right to Property:** The right to an activity; to work for property, to dir-

ect your actions so that you may secure property through labor. -- John Hospers.

**Right to Freedom:** The right to conduct my life in whatever way I please as long as I do not thereby violate another's right to conduct his life as he pleases. -- John Hospers.

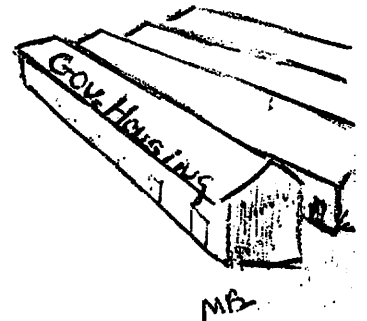
**Right to life, liberty and the pursuit of happiness:** The freedom to take all the actions required by the nature of a rational being for the support, the furtherance, the fulfillment and the enjoyment of his own life. -- Ayn Rand.

**Government:** An institution that holds the exclusive power to enforce certain rules of social conduct in a given geographical area. -- Ayn Rand.



Monument to Individualism

Monument to Collectivism



"The complete consent theory of government views the individual man as apart from and more important than the collective group to which he belongs.

"His personal freedom and welfare cannot be sacrificed to the welfare of the group.

"His desire to protect himself, however, is identical to his responsibility toward others. He cannot force anyone else to serve his welfare either.

"Also, his personal moral choice of right and wrong behavior is considered the result of his own personal judg-

ment; therefore, his freedom includes the freedom to be both moral and immoral, so long as he does not infringe upon the basic rights of another man -- that is, initiate the use of force.

"The emphasis in this school of thought is upon the voluntary nature of a man's membership in the social group.

"If all individual men belong to the collective voluntarily, they should not be forced to acquiesce to the personal moral codes of any other individual, the majority or the government."

--Joyce Jones in "Citizenship Education."

# Editorial . . .

## Political Philosophy -- Was It Evident At The Constitutional Convention?

The Constitutional Convention delegates did not define their words nor their political philosophies, collectively or individually, before or during the writing of the proposed constitution.

And it certainly is impossible to write a cohesive constitution without agreeing on some basic definitions.

For example, I say, "The essential purpose of writing a constitution is to limit government's power so that Montanans will be protected."

"Oh, wait a minute," you say, "the delegates wrote a constitution to create a better (or to expand) government so Montanans could best be served."

You see. My point is illustrated.

Already we have gotten into a contradiction in definition. The word that must be defined is "government."

We can proceed no further until we have both defined the meaning of the words we are using.

### WHAT IS POLITICAL PHILOSOPHY?

It is no accident or random whim that a glossary of definitions is listed prior to this editorial.

Before any intelligible discussion on any subject is possible, all the parties concerned had better understand the manner in which words are being used.

This assumption applies equally to a discussion of political philosophy.

What do I mean by political philosophy?

I believe Joyce Jones, in "Citizenship Education," puts it best:

"Before a citizen can take actions which are intelligently consistent (one action does not contradict another), he must consciously form a political philosophy.

"The term philosophy, in this sense, means a cohesive set of fundamental political convictions."

### A MATTER OF PROOF

Can I prove the statement that definitions and coherent philosophies were lacking at the convention?

Yes.

I can cite the words of a young man who understands political principles and who was very much a part of the convention.

He has said, "The delegates were not versed in political philosophy -- they were totally devoid of it.

"They didn't discuss the role of the constitution in society.

"The role of government was missing.

"They didn't understand the concept of 'rights.' "

Is this sufficient proof?

No, I can cite the basic words that must be defined before writing a constitution.

And I can cite specific examples in the constitution in violation of these basic definitions.

### BEGIN WITH RIGHTS

Let us consider the basic definition needed at the convention.

This, of course, is the role of the constitution in society.

The definition of "constitution," as provided by our glossary is:

" . . . usually a written document which defines the fundamental form, powers, and duties of a government and the rights of the people whom it governs."

It is obvious that the role of the constitution in society is very much a part of the definition of government and a definition of rights.

Some interpretations of the constitution reflect the view that the role of government is to protect individual rights. This interpretation implies an economy free of government regulation.

Other interpretations of the constitution reflect the view that the role of government is to provide economic and social welfare -- even when individual rights are being violated.

In any case, in our definition of government, we are left with an undefined word -- rights. We must define rights.

Very simply, rights are moral principles that define the people's assured freedoms.

Some of the qualities of rights are that:

--They are absolute.

--They pertain to action.

--They are the same for everyone.

But rights are not guarantees that you are going to get things such as jobs, a clean environment, or a home, or an annual income, etc.

It becomes evident that, to discuss the role of government or the constitution, you must start with rights.

### ARE THESE RIGHTS?

Did the convention delegates begin with defined rights in their making of a constitution?

Let us look at the Bill of Rights -- a document defined as one that enumerates the rights of the people -- rights which cannot be violated by the government.

--The right-to-know and right of privacy sections are not absolutes. Each lists exceptions.

If rights are absolutes and necessities of a man's life why are these exceptions listed? And if the sections must have exceptions what are they doing in a Bill of Rights?

--The discrimination provision sets out rights of Montana citizens as against other persons, corporations, etc. But this is a contradiction if rights are shared individually and equally by everyone.

--The Bill of Rights also says that "In enjoying these

(continued on next page)

# Political Philosophy --

(continued from preceding page)

rights, all persons recognize corresponding responsibilities."

But this sentence is not enumerating people's rights -- it is charging the people with undefined "corresponding responsibilities" -- in other words, with duties.

When did the Bill of Rights become a document that specified people's duties -- instead of rights?

## INDIVIDUAL IS SACRIFICED

In the section on inalienable rights, it is stated that people have an inalienable right "to a clean and healthful environment."

Suddenly, we find that right no longer means "to pursue an action" but means something guaranteed (by whom? at whose expense?, and how will it be done?).

Presumably, it means that a clean and healthful environment is guaranteed by the government at the expense of the taxpayer through legislation directed toward the people.

But, this isn't what a right means!

The application of a right must apply equally to everyone.

When you give the government the right to take measures to provide a clean and healthful environment, you are giving the government the power to take action supposedly for the common good but most assuredly at the expense of certain individuals.

You have lost the individual in this situation.

He is the man to be protected by the Bill of Rights.

Now he is the man to be sacrificed by the Bill of Rights because of undefined political philosophy. It is a fitting result of befuddled thinking.

## THE GOOD WILL LOSE

Although I have only cited sections of the Bill of Rights to show a contradictory political philosophy, the lack of definition for the words government, constitution and rights can only bring about many other contradictions in the proposed constitution.

The results are inevitable.

Unfortunately, when you mix contradictory political philosophies in a constitution, the pro-individual sections lose force over a period of time.

Why?

Because if you advocate individual rights but must compromise with someone who advocates "individual rights with one exception", you have destroyed the meaning of rights as an absolute.

Soon someone has another exception to the original right.

Then another exception is added. And another.

Finally, you find people in different camps of thought fighting each other over what belongs to whom. You see it everyday in this country.

And such is the result of contradictory political philosophies and such will be the result of the proposed constitution.

To stop such results, the voter has little choice but to cast a "no" vote when he votes on the proposed state constitution.

## Letter To The Editor

### Factual, Non-Prejudiced

Dear Editor:

I have just finished reading The Gallatin Voice and much to my surprise I found it very factual and non-prejudiced.

Unlike most publications which I read, you have presented different viewpoints as presented by the people interviewer, without slander and without your own interpretation.

The editorial pages are very well done. I especially liked the first page. I wish the American people could accept these simple truths, therefore revising the present trend toward socialism, anarchy and self-destruction. Unless this trend is revised soon, history will again repeat itself.

It is not difficult to determine where we fit into the enclosed

From bondage comes spiritual faith;  
From spiritual faith comes courage;  
From courage comes liberty;  
From liberty comes abundance;  
From abundance comes complacency, and  
From complacency comes apathy;  
From apathy comes dependency, and  
From dependency comes bondage and the cycle begins again.

--H.R. Reichman, M. D.,  
Diseases of the Colon and  
Rectum 8: 382-286, 1965;

I have never written to any editor nor do I intend to make this a practice, however, I felt this was a special situation which merited praise.

I do wish to remain anonymous.  
From a medical doctor who asked to have his name withheld.

"The government based on complete consent has only one limited function -- the protection of the rights of its citizens (i.e., the same right any one individual has with respect to his own rights.)

"It translates its function into action by instituting a constitution and laws -- to objectify what rights are and how they shall be enforced."

(The inside of this back cover can be used by you if you wish to send your opinion on some subject to The Gallatin Voice.

(All letters to the editor must be signed by bona fide persons. However, we reserve the right to publish letters without names if we so desire — as long as we know the author — and we reserve the right to refuse letters in whole or in part.

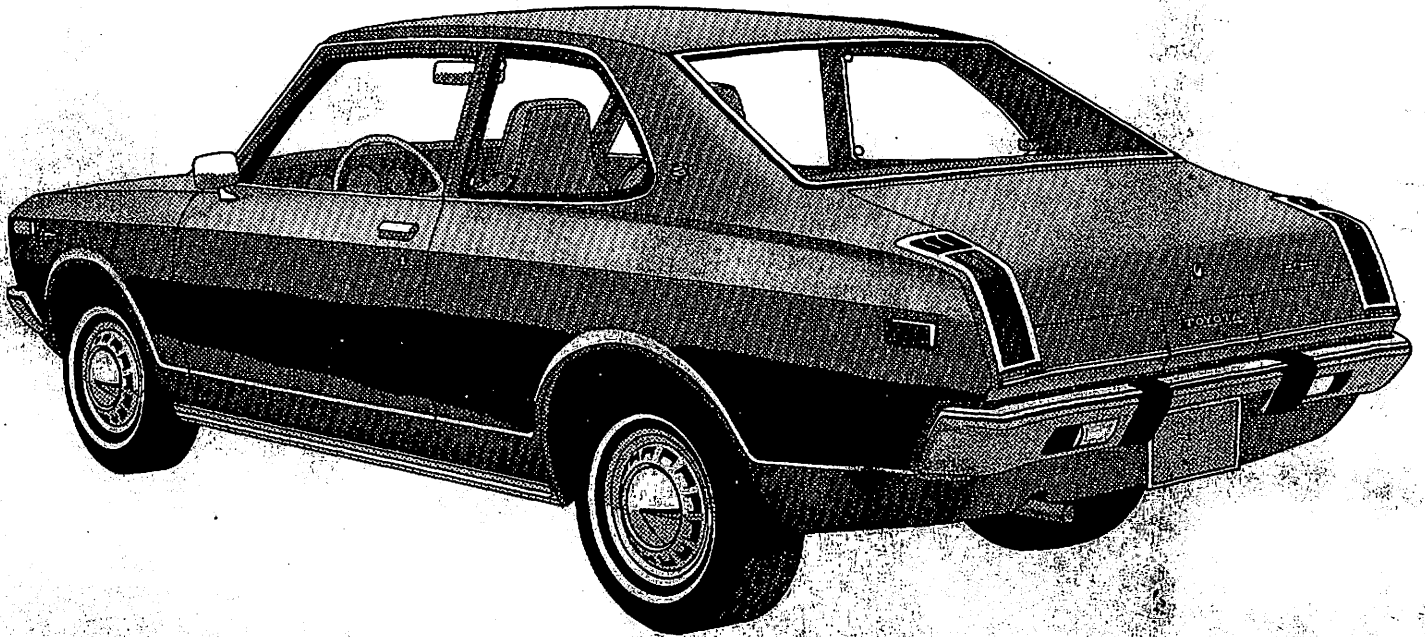
(From time to time readers' surveys will be printed on this page in which you may wish to participate.

(Additionally, anyone who wishes to submit a classified ad can by using this page. This service is offered free.)

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