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Serrano Case Confuses School Financing

Costs in This State Largely Are Equalized

by W. D. DIEHL, Ph.D.

The Serrano vs. Priest case was filed in the California Supreme Court and on August 30 the court ordered the Los Angeles County Superior Court to hear the suit charging that California's system of financing schools is unconstitutional.

It should be pointed out at the outset that the Supreme Court of California did not declare California's method of financing public schools unconstitutional. All the court did was order the lower court to hear the case. However, the way they did was unusual and contributed to much confusion.

The California State Supreme Court ruled that the local property tax basis of financing schools in California, "Invidiously discriminates against the poor, it makes the quality of a child's education a function of the wealth of his parents and neighbors, holding that this condition violates federal constitutional requirements for equal protection of the laws."

The California jurists have thrown the California school finance system into confusion and engendered consternation in virtually every other state. Much of the furor results from press coverage and from statements by public officials and educational spokesmen which are consistently exaggerated and inaccurate. This report is intended briefly to set the record straight and to comment on the relevance of what appear to be the main questions at issue in the Serrano case as they relate to Montana.

Background of Case

Some background on the Serrano vs. Priest case is necessary to provide a basis for intelligent discussion as the issues relate to Montana. The complaint filed with

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Critical Comment

How Is the Convention Doing? It Depends Upon Your Viewpoint

by ROBERT E. MILLER
Publications Editor

Don't give up. All may not be lost. The progress of the Constitutional Convention depends upon your point of view.

In a recent appearance before the government committee of the Billings Chamber of Commerce, two of the delegates who have been most interested in reform, in making changes, in writing a new Constitution, in junking the present Constitution, expressed extreme discouragement.

What discouraged them? One thing was so little legislative reform. The achievement of single-member districts, for example, which many see as a distinct achievement insuring rural representation and blocking domination by political machines, these delegates looked on as insignificant.

Corporate Tax Study Ordered But It's All Been Done Before

Governor Forrest H. Anderson has instructed Revenue Director Keith L. Colbo to start a complete study of Montana business taxes, particularly the corporation license tax.

"For as long as I can remember," the governor said in a statement, "there has been a feeling among legislators, state officials and the general public that there are people who are not paying a fair share under Montana's tax system."

He added that nothing has been done to correct the situation, "even the most obvious distortions."

One reason for this, he said, is that state government has never possessed the management capabilities necessary to conduct a comprehensive study of business taxation, but he feels that the state now has achieved this capa-

The reversal of a position once taken which first would have allowed 18-year-olds to hold public office and which later restricted such offices to those 25 years or older, these two looked upon as a disaster, a "senile" decision.

The decision of the natural resources committee to discard a proposal to allow suits against alleged polluters and not even to bring out a minority report, they called a "surrender of the reformers."

And, while the lawyers are by far in the minority in the Convention, these two bewailed the dominance of the lawyers in its deliberations. They see the lawyers succeeding in retaining portions of the present constitution.

What they overlook is the fact that there has been 75 years of

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Education Aims Outlined in Abstruse Words

High sounding words and phrases which possibly some day must be interpreted by the courts in an effort to determine their legal meaning are the feature of the proposed educational section of the Constitution.

What if the new constitution said something like this:

"The legislature shall establish and finance a system of public education."

That might be broad, but it is not as broad as the proposed section. It may be meaningless as to specifics, but it is much more specific than the one suggested by the Education and Public Lands Committee.

Here is what the proposed section actually says:

"It shall be the goal of the people of Montana to provide for the establishment of a system of education which will develop the full educational potential of each person. Equality of educational opportunity shall be guaranteed to each person of the state."

"The Legislature shall provide for a system of high quality free public elementary and secondary schools. The Legislature may also provide for other educational institutions, public libraries, and educational programs as are deemed desirable. It shall be the duty of the Legislature to provide by taxation or other means and to distribute in an equitable manner funds sufficient to insure full funding of the public elementary and secondary school system."

Some questions immediately suggest themselves.

Why is the system of education merely a goal? Is it something merely to aim at, a target that doesn't actually matter whether it is attained or not? If we have a

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bility. The study will include recommendations for legislation and administration changes to improve the equity of Montana business taxation and to assure strict compliance with Montana law, the governor said.

The study, when completed will be submitted to Anderson and to the 1973 Legislature which will be asked to eliminate the loopholes and inequities and as well as the administrative deficiencies in the business tax laws, and thus achieve "substantial and honest tax relief for the people of this state."

A comprehensive study of Montana taxation, done by Dr. William D. Diehl at the request of the 1969 legislature and distributed to the 1971 members, devoted considerable space to Montana's laws regarding business taxation, especial-

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How About Taxing Business?

As Montana approaches the legislative session of 1973 when the recently-imposed increases in personal income tax and corporation license tax will expire, we expect the politicians to sound off more and more about shifting the tax burden from the individual to the business community.

There is no doubt that the personal income tax is among the most burdensome that has been devised because of its narrow base and the fact it makes the wage earner the principal supporter of government spending.

But to transfer the burden to industry would not do the wage earner much good because he is dependent upon industry for his employment and for his wages.

How much additional taxes can industry in Montana pay and still survive?

That question was answered in just a few dramatic words recently by the president of a Wyoming oil company who had been invited to join the Montana Taxpayers Association:

"We do not operate in Montana solely because of the horrendous tax situation," this company executive wrote. "We see no reason to operate in an area where the taxes amount to a confiscatory reduction of all leases to 65-70 per cent net leases.

"Firms operating in Montana are performing a disservice to the industry. The sooner Montana is abandoned by the exploration industry, the better for all concerned.

"Keep up the good fight for those of you already trapped. We do not propose to be likewise trapped."

So much for the oil industry.

What other industry does Montana have which could pick up a mammoth escalation of the state's tax burden?

Dr. Richard Shannon, an economist at the University of Montana, spelled out the situation explicitly in a recent address in Billings. He was quoted in the press as listing the four Montana industries which are basic to the state. These are agriculture, mining, forest products and railroads.

All are declining in importance nationally, and employment has been dropping in all of them in Montana.

Here is how Dr. Shannon closed his remarks in Billings:

"Montana's prospects for expanded employment and growth are relatively colorless, sluggish, steadily eroding, anemic, as compared to the United States as a whole."

Recent news developments reinforce his statements.

In agriculture, Montana farmers have lost millions because of a west coast dock strike.

In mining, announcement has been made of the pending closure of zinc processing in the state and the demand for added investments to prevent air pollution may close some other plants.

In timbering, the forest service has reduced the amount of the allowable timber cut and western Montana communities foresee the closure of cutting and processing of lumber.

In railroading, the state has lost its passenger trains, the government passenger project is losing money, and railroad employment is down.

Where, then, will the Legislature turn for revenue to supply the ever-escalating demand for spending money on the part of the state's institutions and agencies, the cry for more school money, the plans for state aid for counties and cities?

The employment situation in major industries rules out the income tax as an important source. The economic situation rules out passing the burden to industry.

The only growth observable in the state is in the realm of government service, and government cannot produce revenue to support itself. It can only live off of wages and profits, and wages and profits are declining.

How Is Convention? Making Progress?

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litigation to determine the meaning and the implication of many of the present provisions and that to change even one word in one section would be to open the whole field up to new litigation and new court interpretation. If the lawyers of the convention are fighting against this situation they are fighting an unselfish battle because lawsuits mean bread and butter and yachts and snowmobiles and European vacations for lawyers.

One lawyer was heard to say, in opposing one proposal, that if it were adopted it would keep him in lucrative lawsuits for the rest of his life.

The Legislature — Annually?

There are two sides to the question of whether the state needs or wants annual sessions of the Legislature. The problem of time in which to investigate and work might easily be solved by authorizing more interim committees and more staff, and a longer biennial session instead of the present 60 days. Idaho and New Mexico have gone to annual sessions and are now trying to get rid of them. They have found that legislators with time on their hands pass too much legislation, spend too much money and cost the state too much in operating expenses.

The Legislature — One House?

The voters apparently will be given a choice as to whether there will be a one-house (unicameral) legislature in which every member is a senator, or the present two-house (bicameral) make-up.

The argument for unicameral is that it is so much easier to enact legislation if only one house has to act. That, really, should be an argument against it because legislation should be difficult to enact. Continual change in the law is not good for either people, business or government.

Even some members of the Convention who were originally for a unicameral legislature are beginning to see the value to the state if their own organization had another body to check up on their work with a different point of view.

Many experienced observers point to the need of a second chamber to revise and counteract the hasty legislation which can slip by one body in the heat of enthusiasm or at the dictation of powerful and unquestioned leadership.

The Legislature — 60 Days?

One thing which was done was to reverse the proposition that the assembly could meet every year for 90 days. In a more thoughtful and sane decision the 90 days was cut to 60, even though it is still every year instead of every other year.

But even that 60 days is different than the present 60. The new 60-day session is for 60 legislative days and not 60 calendar days, as

is now the limit. This means that weekends are not counted and neither are days when the assembly fails to meet.

Take the year 1973, for example. A 60-day session under the present limit would end on March 1 but a 60-day session under the new limit, if the members worked a five-day week, could run to March 23.

Moreover, there are provisions that the members may call themselves into special session and there is no time limit if the governor should call a special session.

No one needs to bewail the present proposed time limit on the legislature.

Polling Place Resignation

One proposal that has gone down the drain, to the regret of no thoughtful person, is that of polling place registration at the time of election. There are places in Montana where elections have been questioned even at best and where it is said that the deceased voted for years after their residence became the cemetery. Just think of the result if no advance registration were mandatory and if the followers of political machines could flock from polling place to polling place, registering and voting in each as many times as necessary to win an election.

No Election Expenses

First approved and then defeated was a proposal that the taxpayers, through the legislative appropriation process, pay the campaign costs of candidates running for district judge and for the Supreme Court. The candidate would not be allowed to spend more than was appropriated, the theory apparently being that only the rich lawyers can afford to run for such offices under the present system.

Legislative Reform

Now that the session is down to nitty-gritty the press is filled with the evident battle between the reform element and the conservatives. Here is the way the Associated Press described the situation.

"Inexperience has hurt the reformers, most of whom are political novices. They are not as adept at parliamentary maneuvering as the former legislators in the body. Thus old pros, who generally back the status quo, have often gained the upper hand on the floor. Unlike the liberals, the status quo delegates are aware of the facts of life in the convention: The more a delegate stands up and speaks, the less clout he has. So, while the wily old pros lean back and wait for an opportune time to speak, many reformers, one-by-one, speak on practically every issue. This often alienates the important swing groups — the uncommitted — who stand between the liberals and conservatives."

That is why we say, "Wait for the finished document. It may not be as bad as it seems. The radicals have done the most talking and have had their remarks printed in more newspapers. But the same may still rule the day."

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the California State Supreme Court alleges that the financing scheme for public schools "(a) makes the quality of education for school-age children in California, including plaintiff children, a function of the wealth of the children's parents and neighbors as measured by the tax base of the school district in which said children reside and, (b) makes the quality of education for school-age children in California, including plaintiff children, a function of the geographical accident of the school district in which said children reside and, (c) fails to take account of any of the variety of educational needs of the several school districts (and of the children therein) of the State of California and, (d) provides students living in some school districts of the state with material advantages over students in other school districts in selecting and pursuing their educational goals and, (e) fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources and, (f) perpetuates marked differences in the quality of educational services, equipment and other facilities which exist among the public school districts of the state as a result of the inequitable apportionment of the state's resources in past years, (g) the use of the school district as the unit for the differential allocation of educational funds bears no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the state, (h) part of the state financing scheme which permits each school district to retain and expend within that district all of the property taxes collected within that district bears no reasonable relation to any educational objective or need, (i) a disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which relatively inferior educational opportunity is provided." (p. 4 and 5 of opinion—Appearing at 5 Cal. 3d 584, filed August 30, 1971.)

Disparity Alleged

In the second cause of action plaintiff parents allege that as a direct result of the financing scheme they are required to pay a higher tax rate than taxpayers in many other school districts in order to obtain for their children the same or lesser educational opportunities afforded children in those other districts.

It should be noticed that in enumeration of the nine allega-

tions of the first cause there is heavy reliance on use of the terms "quality of education," "variety of educational needs," "material advantages," "equal educational resources," "quality of educational services," "equal educational opportunity," "educational objective or need," etc. This terminology raises the question of the relationship between quality education and expenditure per pupil. It also raises a basic question about the relationship between terms such as "basic educational needs" and "expenditure per pupil" and "adequate funding for basic educational programs" and so on. The latter are terms that we are all familiar with since they are used so extensively by educational spokesmen of the state.

Terms Are Vague

One of the great difficulties with such terms is that they are so nebulous that a manageable standard cannot be found in connecting the terms with expenditure per pupil. Research findings increasingly run counter to the notion of a favorable relationship between pupil achievement and expenditure per pupil. Obviously, the Supreme Court of California was sold on the idea that just because two school systems had somewhat substantial differences in resources, then automatically there was a comparable difference in educational excellence and that such difference deprived some youngsters of an adequate education in violation of the Fourteenth Amendment to the U. S. Constitution.

The major premise underlying the decision is not supported by the evidence and hence the entire syllogism is false. Of course, no school district can be operated without money, but after the basic costs are funded the correlation between the input of additional money and the output of additional student intellectual growth shows no relationship. It would seem that in this case, the burden of proof that alleged favorable relationship exists with increased school expenditures falls overwhelmingly on the proponents of the argument, yet the California Supreme Court simply assumed the validity for that claim.

One cannot overlook the fact that there are two fundamental issues underlying the basic premise of the Serrano case.

Basic Funding

One issue has to do with the basic funding level established by the State of California for elementary public school children. The other has to do with the financing scheme that has been designed to fund that basic educational program. It is clear from the allegations of the plaintiff in this case that they are not only attacking the funding level of the California foundation program, but also they are attacking the equity of the system used to finance that foundation program.

In the first instance it appears that the court would be usurping the authority of the California Legislature in trying to determine for that Legislature what it should require as a "basic minimum education." The obvious implication is that the basic foundation program level should be equal to that of districts which spend much more in educating their children.

In the second instance, the allegations of the plaintiffs and the subsequent opinion of the court raises the question of whether there is constitutional necessity for limiting all schools to per pupil expenditures on the same level. The state court opinion appears to omit careful attention to this question, but leaves a clear implication that unequal protection of the law results from inequalities in per pupil expenditures based on differences in taxpayer ability. Since there is no concern about the property tax rate in the wealthy districts, income levels in the wealthy districts was an implied criteria.

People's Decision Ignored

Of course, the court brushed aside the demonstrations that some differences in per pupil expenditure result from conscious and willful decision NOT to increase school taxes and NOT to offer certain programs. Also the court failed to recognize the important part played by differential costs of educating students depending on the size of the school and differences in cost of living between different areas within the same state.

It was not recognized in the court opinion that a majority of patrons in one school district may well opt for inclusion of many programs and school features that are of little concern or interest to patrons in other districts. Yet the implication is clear from the California court opinion, that regardless of factors other than differential wealth, the very fact of higher spending in one district than another is indicative of unconstitutional discrimination in "educational quality."

The major premise of the California court opinion may be stated as follows: "No school district can offer an adequate program without massive financial resource or all school districts with equal financial resources must offer equal educational programs." This premise seems to be taken and accepted as legal fact by the California court opinion.

Montana's Case Compared

With that background of the California case, Montana's school funding program may now be put into perspective with those issues. Since the Serrano case in 1970, educational spokesmen, newspaper editors, legislators, and others have commented on its relevance for Montana. The Superintendent of Public Instruction and her staff have carried out a study of the equity of Montana's school funding program. The Legislative Council has established a committee to

study Montana's school funding program. The discussions in Montana by educational spokesmen have degenerated into a quagmire of abstruse pronouncements which are apparently designed to increase educational expenditures by lower pupil-teacher ratios, higher teachers' salaries and kindergartens.

These same spokesmen have recognized the intense pressure generated by advocates of a broadened tax base for support of schools and they are fueling the fires by further mistaken interpretation of the California court opinion. Among their pronouncements is a basic plea for shifting from the sensitive property tax to some other less sensitive revenue source for financing education at a much higher expenditure level than it is currently being financed. The studies of school funding are a feeble attempt to extract from their data support for the assumption that Montana's school funding program is inadequate and inequitable.

Tries to Define Equity

The study carried on by the Superintendent of Public Instruction and her staff, dated January, 1972, is an attempt to analyze the equity of Montana's school funding program. At the time of writing this paper, only part one of the study was available. Part I of the study, "deals with the inequities in educational program financing which have arisen as a direct result of the existing methodology for funding school district general fund budgets."

The objectives of the analytical effort by the Superintendent and her staff were to investigate the relationship between district wealth as measured by taxable valuation per average number belonging (ANB), and per pupil general fund budget expenditures, the size of district levies for support of the general fund budget, the amount of district revenue produced in support of general fund expenditures, the size of total general fund levies by district and county, the amount of county revenue produced in support of general fund expenditures and the amount of state aid per pupil received by the district.

The study used a basic statistical tool called correlation analysis which simply attempts statistically to measure associations between variables such as taxable value per average number belonging, per pupil general fund budget expenditures and the others mentioned above.

Typical Conclusions

Typical conclusions drawn from this analysis are as follows: (1) As district wealth increases, the per pupil general fund expenditure increases indicating that wealthy districts tend to spend more per pupil than poor districts. This is evidenced by a positive correlation

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between district wealth and per pupil expenditure of +.365. (2) As wealth increases, the amount of state aid per pupil received by the district tends to increase. The correlation in that case was +.130 which though small is nevertheless significantly positive. The conclusion drawn is that this correlation indicates that the goal of providing state aid in inverse proportion to district wealth is not being realized in Montana. The conclusion goes on to state that the wealthier elementary districts are receiving more state funds on a per pupil basis than poorer districts and this is explained by the fact that many of the wealthier districts are small enrollment wise and the foundation program for very small schools is large on a per pupil basis. Also, that school districts irrespective of their wealth receive interest and income money on a per census child basis regardless of the ability of the tax base to support the general fund budget. (3) As district wealth increases, the size of the district levy required to support the general fund budget tends to decrease and furthermore, as wealth increases, the amount of district funds per pupil tends to increase. (4) As district wealth increases, the county property tax levy (basic levy plus deficiency levy) required for the support of the foundation program tends to decrease. Furthermore, wealthier districts tend to receive more county funds per pupil than poorer districts. (5) As district wealth increases, the total property tax levy tends to decrease.

Ability to Pay

The basic presumption in the overall analysis of the equity of Montana school financing program is that property value per ANB is the sole indicator of district ability-to-pay. It has long been held by public finance experts that property is not a very good indicator of ability-to-pay taxes; rather income per person or per family is thought to be the most universal and equitable measure of ability-to-pay taxes.

Montana's foundation program does not presume that property value is the sole indicator of ability-to-pay. In addition to the 25 mill uniform county wide mill levy for elementary schools and the 15 mill uniform county wide levy for high schools, state law requires that 25 per cent of the individual income tax and corporation license tax and 50 per cent of U. S. oil and gas royalties be used to assist in foundation program funding the schools. Also, the main source of funds for direct legislative appropriation is the individual income tax and corporation license tax.

One of the long-standing foundations of public support for public education is that through education, the stock of human capital is increased, which increases the value of the human agent in the economy which in turn increases personal income. Over time in this country, the value of the human agent — people — has increased much more rapidly than the value of non-human resources; hence, the domination of wage and salary components of our national income. These factors were carefully recognized in the original formation of Montana's school funding apparatus and its subsequent revisions. The basic design of the school funding program in any state must make reference to the economic situation in that state.

Sensitive to Structure

In this respect, this writer considers the Montana foundation program to be very sensitive to Montana's economic structure in several respects. We must understand the basic economics of Montana's economy and then we can understand more fully why the Montana school funding program must be considered equitable.

There is a basic economic dichotomy between Montana's rural areas and Montana's urban areas. The first component of that dichotomy is with respect to rural areas. Montana's rural areas are sparsely populated. The property tax base in these rural areas is dominated by agricultural, railroad and public utility property which generates relatively little personal income and has relatively few people directly associated with its role in the state economy. This property produces high taxable value per person and generally lower personal incomes.

The other aspect of the dichotomy has to do with Montana's urban areas. The amount of taxable property within urban centers is more or less directly associated with the number of people living and working there. Economic activities carried on in urban areas are for the most part labor intensive and consequently, the taxable value of real and personal property in urban areas is generally low relative to the number of people. In the labor intensive industry present in Montana urban areas, there is relatively high personal income per person generated. Given these basic economic facts one would then suspect that so-called wealthy districts would be districts in rural areas in Montana having a relatively high property value per capita or per average number belonging and so-called poor districts would be in urban centers where the taxable value per capita or per average number belonging would be average or below average when related to the state as a whole. On the other hand, one cannot forget that in the so-called wealthy districts, personal incomes are generally low and in the so-called poor district personal incomes are generally

high. If one would correlate property value per capita with personal income per capita among the counties of the state, there will be a significant negative correlation between these factors.

Not a Wealth Tax

Now, one can see the difficulty in viewing the property tax as strictly a wealth tax. If the property tax is viewed strictly as a wealth tax, it is logically consistent to measure the tax burden by the effective rate. However, if one views the property tax as partly a wealth tax and partly an income tax then the ability to pay of tax-paying units must enter the concept in measuring tax burden. Even in support of the local public schools. The main point is that the burden of the tax must be related to ability-to-pay of tax-paying units. In many instances, ownership of wealth and ability-to-pay go hand in hand, but in other instances, it is not so—especially in predominantly agriculture economy in which resources are not mobile.¹ (Bureau of Business and Economic Research, School of Business Administration, University of Montana, Montana Fiscal Affairs Study, Chapter 9, pages 326 through 448.)

In view of the general economic background which must pervade analysis of the system of school funding in Montana, it appears that so-called wealthy districts in terms of taxable value per ANB may be in fact low income districts where the family ability-to-pay high property taxes simply does not exist. If one were to take each of the five major conclusions from the data analyzed in the Superintendent's report and substitute low income districts for wealthy districts, the conclusions and implications of the Superintendent's report would be just the reverse.

Realistic Funding

One additional aspect of the Superintendent's report that requires comments is that the question was raised, "what constitutes realistic funding levels for a minimum basic education program?" There was an attempt in the report to "provide a partial basis for answering this question." Charts were prepared plotting the actual per pupil general fund budget values for each of the districts in the state and those were compared with the foundation program schedule values enacted by the 42nd Legislature for 1971-72. It was seen from those figures that only in rare instances does the foundation program actually cover general fund expenses.

Such an analysis is hardly an indication of what constitutes realistic funding levels for a minimum basic education program. The fact that school districts spend more per child than is provided by the foundation program has little to do with the adequacy or inadequacy of the foundation program. It has little to do with the quality of the education provided by the foundation program. It has little to do

with whether the actual funding levels are more advantageous, desirable or serviceable than the foundation program funding levels.

People Decide

The difference between expenditures per pupil and foundation program budgets per pupil are a result of the difference between what people want to spend for educating their children and what the state Legislature considers suitable and fully sufficient as far as state responsibility is concerned.

The study goes on and I quote "whether the 1971-72 general fund expenditure levels are indicative of the costs of minimum basic education programs in the various school districts for 1971-72 is a question which cannot be answered by de-facto statistical analysis; however, the general consensus that most of the school districts could do a better job with more money and nearly any of the districts would have a difficult time doing an adequate job with less money provides strong (albeit intangible) support to a conclusion that the average per pupil expenditure for any given size category is probably an unreasonable estimate of the true cost of a minimum basic educational program for that size category.

The first statement in the paragraph should have been sufficient and must be considered the only suitable conclusion from the evidence offered in this piece of scientific research which is intended to be the basis for decisions relating to fact. The rest of the statement is mere speculation on the part of the writer, but is used to imply highly respected findings of a scientific study.

Want Only Money

The major conclusion is that schools need more money. More money will provide a higher quality educational product. So the decision rule is more money—better education. In addition, it is difficult to understand what is meant by the phrase that the general consensus provides strong (albeit intangible) support to the conclusion stated therein. It is difficult to understand how something vague and indefinite to the mind can be strong in any sense of the word. In any case, this particular discussion having to do with the general funding level support of the foundation program as it relates to total general fund expenditures serves as the basis for the major conclusions as stated in Section 6 of the report.

It is my conclusion from reviewing the material and considering the Serrano vs. Priest case in light of Montana's foundation program and school funding apparatus that Montana has a funding system which provides school children in Montana with about the same educational opportunity regardless of economic circumstances of their parents and neighbors and therefore a viable case to attack the present funding methods would be difficult to establish.

Taxpayer Shields Taken from Constitution

Several provisions intended to shield taxpayers have been removed in the proposed new Montana constitution.

Three articles in the present Constitution are devoted to taxation and finance: These are Article XII, Revenue and Taxation; Article XIII, Public Indebtedness and Article XXI, Montana Trust and Legacy Fund.

The various sections of the three articles have been tested before the Montana Supreme Court again and again. As a result of this litigation a body of law interpreting the Constitution has been built up over the many years since its ratification by the people, October 1, 1889.

The Revenue and Finance committee proposal on Constitutional revision has been rewritten into fourteen proposed sections. These sections will be debated by the Constitutional Convention and out of these debates will possibly come several or many amendments before final approval by that body.

As stated in the introduction to the committee proposal, the Constitution does not have to say a thing about taxation because the power to tax is an inherent power of the state. As a result, some of the proposed sections simply state a power already possessed by the Legislature and other sections are more specifically included to restrict the state's taxing or revenue powers.

Section 1 provides that taxes shall be levied by general laws for public purposes.

This broad language is meant to replace the specific tax base provisions in the current document. This new language allows the Legislature to eliminate such items as household property that are difficult, if not impossible, to assess and tax. A subsection earmarking income tax revenues for education and the general fund was removed. The will give the Legislature full authority to allocate revenues where the needs exist. This section will also eliminate the possibility of faulty revenue estimates that have resulted in a shortage of state funds to public school districts within the state.

Section 3 eliminates the present county and state board of equalization and mandates a state level system of appraisal, assessment and equalization.

Section 4 guarantees that property will be assessed at the same value for state, county or school district purposes.

Section 5 provides that property of the United States, cities, towns, etc. may be exempt from taxation, but any private interest may be taxed separately. This article does not require that all property be taxed, leaving the scope and nature of taxation program up to the Legislature.

Section 6 is a revision of the present anti-diversion amendment which now prohibits highway user taxes from being appropriated for such purposes as welfare, education, general government, etc.

This new section allows highway earmarked funds to include local government roads and street systems, highway safety programs and driver education programs.

The new section allows diversion of highway funds by 3/5 majority of the legislative assembly. In other words, when the Legislature is hard-pressed for funds, gasoline taxes can be appropriated for welfare, etc., or gasoline taxes could be increased and appropriated for social or other causes. The revision gives little or no protection for the highway matching funds.

Section 7 provides for a tax appeals board to be created by the legislature.

Section 8 provides that no state debt shall be created unless authorized by a 3/5 vote of the members of both houses of the legislative assembly. And that state debt cannot be created to cover deficits incurred by the Legislature for the state's general fund.

This section takes the voting of state debt out of the hands of the people and allows the Legislature by 3/5 vote to incur an obligation against the property owners of the state. In other words, the Legislature could bond the state for an astrodome, another unit of the University System, or you name it, without putting the issue up to the vote of the people who would have to pay the bill.

Section 9. Appropriations by the legislative assembly shall not exceed anticipated revenue during any budget period. This section re-establishes the provision in the present Constitution. While various legislative sessions have balanced the state budget with a pencil by knowingly overestimating revenue, this section at least appeals to the better traits of the members of the Legislature and reminds them of their fiscal responsibility to the State of Montana.

Section 10 leaves limits of indebtedness for local governments up to the Legislature.

The current Montana Constitution provides a limitation for the amount of debt that can be enacted by counties, cities, school districts and high school districts. This section strikes that protection for the property owner and puts it in the hands of the Legislature. In other words, the Legislature, depending upon how it is pressured, can authorize debt limits for local governments.

With the extension of the vote to non-property owners, people owning homes and other property should have some protection

against ever-increasing public debt. The needs, imaginary and other, for the creation of public debt are almost limitless. Property owners can well fear that time when they will simply be outnumbered by non-property owners willing to vote a burden upon them.

Section 12 provides that the legislative assembly shall enact the necessary laws to insure strict accountability of all funds received and money spent by the state, while Section 13 orders the legislative assembly to provide for unified investment program for public funds along with rules and regulations and accountability.

Section 14 provides that a special levy may be made on livestock and agricultural commodities for disease control, predator control, etc. These levies are paid strictly by the industry for industry purposes.

Section 9 of the present Montana Constitution providing for a two-mill limit for imposition of a state-wide property tax levy has been eliminated from the proposal. This has been imposed from time to time at the discretion of the state administration in order to alleviate state general fund financing.

The elimination of this proposal leaves it wide open for the Montana State Legislature to enact a state-wide property tax to balance the state's general fund when it is unpalatable to increase other state-level taxes and to establish a state-wide property tax for the support of the public schools. The argument put forth is that it is necessary to allow the state to impose the state-wide property tax for schools because of the Serrano (California) school case and others.

It is the opinion of several experts in the field that the present Montana statutes can be amended in order to satisfy such court decisions without changing the Montana Constitution.

As far as property owners are concerned, objections to the majority report are as follows:

(1) County boards of equalization are eliminated, so taxpayers must appeal to a state board in the matter of property valuation questions.

(2) The Constitution bonding limits on property have been removed with the authority given the Legislature to establish whatever limits it sees fit.

(3) The property tax has been thrown wide open as a source of revenue for funding state-level expenditures.

(4) The Montana Legislature can bond property owners throughout the state for building projects, etc. without a vote of the people.

Few changes were made by the committee of the whole in the Revenue and Taxation article. One

would eliminate creation of a tax appeals board from the constitution and vest it in the legislature. The board would function at both state and county levels. An attempt to bar the legislature from enacting a sales tax in the future was defeated, as was an effort to reinstate the two-mill limit on the property tax for state purposes.

Property Values Increase In State

In ten years from 1961 to 1971 the grand total of the value of all property assessed in the state of Montana increased 39.8%, a table in the Montana Taxpayers Association's new booklet, "Montana Property Taxes" reveals.

In dollars, the valuations went from \$690.7 million to \$965.7 million, a gain of \$274.9 million.

In the last five years the valuation gained \$141.2 million or 17.1%. Another table in the same booklet shows that in this same five-year period the percentage of property taxes in relation to valuation was also increasing by 29.1%. In 1966 the total property taxes were 14.8 per cent of the total valuation. In the last available year, this had gone up to 19.1%.

Changes revealed in the ten-year table are that the valuation of livestock has taken the greatest jump, 78.9%, going from \$36 million to \$64 million.

All farm land and improvements gained 20% in taxable valuation, from \$125 million to \$150 million.

All real estate and improvements increased 46%, going from \$304 million to \$446 million. Included in this category, city and town lots went up 63% and improvements on city and town lots went up 43.8 per cent.

Almost astronomical were the increases in suburban tracts, villa sites, orchards and the like, which went up 1,467%, while improvements on suburban tracts increased in value 1094%. Total valuation of the former in 1971 was \$9.4 million while that of the second category was \$25.3 million, a gain of \$23 million from ten years before.

All personal property other than livestock shows a total valuation for tax purposes of \$227 million this last year, a gain of \$66.6 million or 41%.

Operating property of public utilities, the final category on the list, is \$35 million this year, a gain of \$7.6 million or 27%.

In each of five selected years, 1957 to 1969, total city revenue trailed total city spending: by \$792 million in 1957; by \$336 million in 1960; by \$362 million in 1965; by \$485 million in 1968, and by \$778 million in 1969.

Safeguard to Be Financed By Federals

The federal government is prepared to pay the bulk of the cost caused by the impact of the anti-ballistic missile (Safeguard) missile system in north central Montana, according to figures provided by Lloyd F. Meyer of the Montana Department of Planning and Economic Development.

An analysis of the cost to the state and various communities, caused by the impact of the new system, which was published in the December issue of the Montana Taxpayer, was a preliminary study only and has been superseded by federal action in a number of areas, Meyer's figures show.

The principal change is that Congress has appropriated approximately \$14 million for community impact assistance funds for Montana and North Dakota in a bill (Public Law 91-511) sponsored by Senators Metcalf and Mansfield. A portion of these funds have already been allocated to projects in the communities involved.

As of December 17, 1971, Montana had requested a total of \$8,296,953 for community impact assistance and \$3,150,073 had been transferred from Department of Defense funds. Approximately \$1 million has also been provided from other federal agencies.

The larger items which had been funded by the Department of Defense included \$481,440 for elementary school construction in Conrad; \$38,640 to the state for public sanitation; \$163,600 to Conrad for sewage treatment; \$60,000 for water and land conservation at Lake Francis in the Valier area; \$1,450,000 to the state for highway construction; \$816,668 to Conrad for water system and waste disposal; \$25,000 for extension resources development agent in the deployment area, and about \$100,000 to the various communities and counties for law enforcement.

There were smaller items transferred to Chester, Conrad, Great Falls and Valier for elementary school operation and maintenance.

One of the larger requests still under consideration by the Safeguard Command is for \$3,400,000 to pave Highway 225, the Bootlegger Trail. If this project is funded the state's "batting average" in funds approved in ratio to funds asked will be quite high.

Primary employees of the Safeguard system who are expected to reside in the area from 1971 to 1976 will range from 1,258 to 2,025 for the period, with the highest number being in 1975. Total population increase as a result of this number of primary employees is estimated to be from 2,483 to

5,711. These figures do not include secondary employees and their families.

The dollar value of the sites upon completion will be \$195 million. The estimated average annual earnings which will be generated by primary and secondary workers will be \$50.6 million. During the peak of construction the average monthly pay roll will be \$3.8 million. During the installations and test interval from 1973 to 1975 the typical monthly pay roll will be an estimated \$2.1 million. After the system is operational an annual pay roll of \$10 million is projected.

Total earnings generated during the period from 1970 to 1976 are estimated to be \$354.1 million.

As a direct result of the increased earnings in the area it is estimated that state income taxes will increase by \$19.6 million during the period from 1970 to 1976, while increased property taxes generated by the project are estimated to amount to \$4.9 million during the same period. It is estimated that \$3 million a year in taxes will be generated after the project is completed.

One of the undecided questions at present is whether permanent personnel will be housed at the PAR (perimeter acquisition radar) site south of the Tiber Reservoir after completion of the project.

If personnel is housed at the site, Col. Thomas Duke, Safeguard commander, told the Governor's Manpower Planning Advisory Council, it will be necessary to build an elementary school system there for approximately 280 pupils and to arrange to carry high school pupils by bus to Shelby. If the personnel is not housed at the site it will be necessary for them to commute from Shelby, Conrad or Chester, all about equally distant, and their children would attend school in those communities.

Tax Study Ordered; It Has Been Done

(Continued from Page 1)
ly those imposed on so-called foreign corporations.

Business taxation is a complex matter because of the wide variety of taxes across the country and because each of the 50 states has a different system, Dr. Diehl reported.

A complicating factor, and one which has led to much litigation as well as federal and state legislation, is the matter of the state taxing operations within its borders of businesses which are domiciled in another state.

The aim may be to equalize the taxation between the firm in the home state and its competitor in another state, but the law says that the state is taxing business in interstate commerce, and that is another matter, Dr. Diehl pointed out.

The United States Constitution

Education Aims Outlined In Most Abstruse Terms

(Continued from Page 1)

proper goal who can complain if the goal is not reached?

What is the full educational potential of each person? Are we to give every citizen an intelligence test, no matter whether he is 8 or 80 and send him back to class if he hasn't developed his full potential? The wording obviously is aimed to allow kindergartens, but many school systems now are at the limit of the ability of taxpayers to support them without kindergartens.

What does "high quality" mean in defining schools? Does it add anything? Does this mean better than adequate? If the people get careless, high quality may actually be low quality in comparison with something else. If high quality means spending a great deal of money, as some educators define it, then it might bankrupt the state.

Other institutions may be improvised which are "deemed desirable." Nothing is said about who is to do the "deeming." Will it be the legislature? Will it be the state board of education, which is given power to regulate certain portions of the education system? Will it be the board of regents, which has authority over another system?

gives to Congress the right to regulate commerce among the various states, and this has been held by the courts to mean that excessive state taxation of out-of-state firms constitutes a burden on interstate commerce and is thus forbidden.

Generally, the states have been restricted to taxing within their borders only the income of out-of-state corporations which is earned in that particular state. The fact that many corporations which operate in Montana report a net loss on business done in this state hampers the state in its efforts to collect taxes on such income.

Some 19 states, including Montana, have entered into what is known as the Multistate Tax Compact by which an agreement is sought on taxation of firms whose business crosses state lines.

The Montana Board of Equalization is the agency which administers Montana's relations with this tax compact.

One of the accomplishments is the establishment of an auditing system which determines how much of the income of each interstate corporation arises in each state to the end that each state may thus collect a portion of the taxes owed by the firm on its interstate business.

However, the main stumbling block has been the failure of the United States Congress to enact laws which establish guidelines for the states seeking to collect revenue from interstate firms.

Then, after the other institutions "deemed desirable" are created, the legislature is given a mandate to finance them.

How is this to be done? By "taxation or other means."

What other means than taxation are meant? No one knows now, but they are writing this constitution for the future, so it is a problem that obviously is meant for the future. Other means than taxation, such as confiscation of property or wages, may well be the solution.

Who can say what fiscal chaos could be created under a spending power in which the spenders dictate the level of the outgo and the legislature is ordered to comply by financing it "by taxation or other means." This must be full funding, also. None of that partial funding which the current legislatures have been giving us because they didn't want to increase state taxes and the local property taxes were too far away to worry about.

Local property taxes will probably be a lot closer and a lot more tangible when the schools get through finding all the spending loopholes which have been left in Section 1, quoted above.

\$714 Million in U.S. Taxes From Montana

Montana will pay \$714.3 million of the 1973 federal budget, according to a computation by the Montana Taxpayers Association.

The federal budget of \$246.3 billions has been submitted to Congress by the President.

The formula of Montana's share is one which has been developed by Tax Foundation to show how the tax burden of the federal government is distributed among the states.

At the present property tax level of \$184.3 million per year in Montana, the \$714.3 million which the federal government will take out of the state would finance all local government and schools for nearly four years.

At the current level of state spending, it would finance state government for nearly eight years.

The \$714.3 million is two and one third times as much as all state and local revenue collected for all purposes in Montana, including gasoline taxes and fish and game fees, in the last year.

The federal budget anticipates receipts in the next fiscal year, which begins July 1, at \$220.8 billion with a unified budget deficit of \$25.5 billion. It is noted that this deficit comes on top of a deficit now estimated to be \$38.8 billion for the current fiscal year and of \$23 billion deficit in the fiscal year which ended June 30, 1971.