

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

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

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

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

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

2. Legislature, Article V -- page 3

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

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

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

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

3. Executive, Article VI - page 6

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

4. Revenue and Finance, Article VIII - page 8

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

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

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

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

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

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

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

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

May 12, 1972.

Respectfully,

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