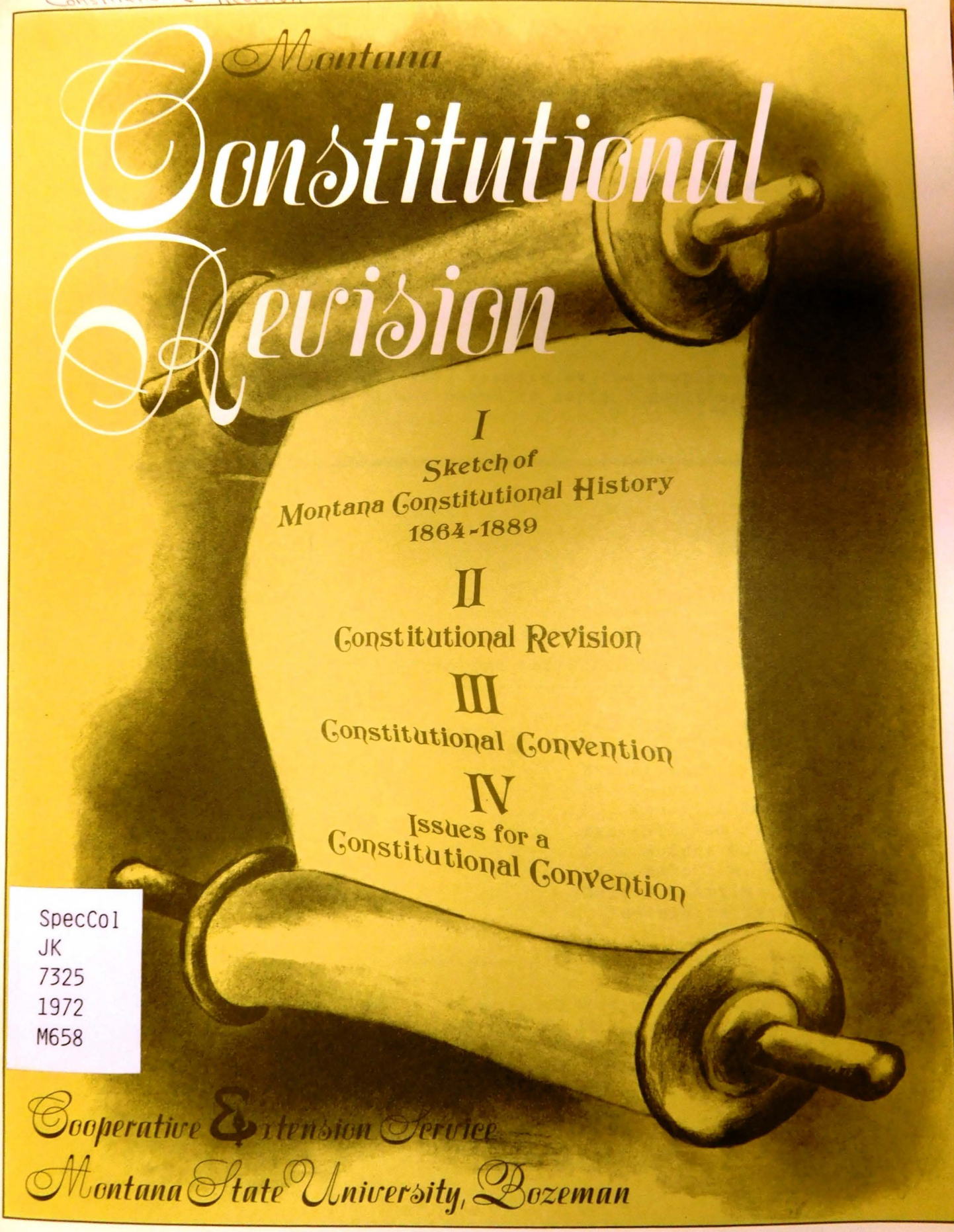
Montana Constitutional Revision



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Cooperative Extension Service
Montana State University, Bozeman

The material in this publication was written by the Montana Constitution Revision Commission. This Commission was created by the 41st Legislative Assembly in 1969.

The Montana Cooperative Extension Service printed this publication at the Commission's request in order that Montana people might be better informed about the recommendations.

The providing of this service by the Cooperative Extension Service is not meant to imply a position of endorsement.

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Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Torlief S. Aasheim, Director of Extension Service, Montana State University, Bozeman, Montana.

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APPROVING OR REJECTING THE CONVENTION'S RECOMMENDATIONS

Only the people can approve or reject the convention's recommendations. The final step in the process of constitutional revision is the submission of the convention's recommendations to the voters for ratification or rejection. The constitution requires that the convention schedule an election for the purpose of ratifying or rejecting any proposed revisions, alterations or amendments. The convention may submit its recommendations in the form of a comprehensive draft of a revised constitution or it may submit several separate proposals to be voted on individually. But in either case, before any recommendations approved by the convention can take effect, they must be approved by a majority of the voters.

IMPLEMENTING THE RECOMMENDATIONS APPROVED BY THE PEOPLE

Among the convention's recommendations, it is necessary to provide for a smooth transition from the previous constitutional provisions. These transitional provisions allow time for the legislative, executive and judicial branches of government and local governments to implement the new constitutional provisions. The transition schedules may provide for separate effective dates for various portions of the recommended changes.

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CONSTITUTIONAL REVISION

PURPOSE OF CONSTITUTIONAL REVISION

In 1816 Thomas Jefferson wrote to a friend:

> I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change in circumstances, institutions must advance also, and keep pace with the times.

The Declaration of Rights in the Montana Constitution states that "the people of the state have the sole and exclusive right. . . to alter their constitution. . . whenever they deem it necessary." The delegates who wrote the present constitution recognized the possibility of a need for comprehensive revision and provided for calling a constitutional convention. They also observed in "An Address to the People" that the people, when required, may be safely relied upon to correct constitutional inequalities and to provide new safeguards.

Referendum 67

By a two-thirds vote in both houses the Montana Legislature has submitted the question about calling a constitutional convention to "revise, alter, or amend the constitution of Montana" to the voters. The people will vote on Referendum 67 this November. Only the people can vote to call a convention. . .Only the people can approve or reject proposals of the convention to revise, alter or amend the constitution.

Montana has greatly changed in the 81 years since its constitution was adopted. The test of the effectiveness of our constitution, however, is not its age, but how well the government, it creates, functions. Unfortunately, because the state constitution is an obscure document to most citizens, they cannot evaluate how well it functions. Many states, including our neighbors of Idaho, North Dakota, and Oregon, have recently taken steps to modernize their aging constitutions to improve state and local government. The same opportunity is now presented to Montanans. Each person has a responsibility to himself, his children, and his fellow citizens to vote wisely on this question. This individual responsibility should prompt an examination of the document and a consideration of how needed changes may be accomplished.

Modernizing the Montana Constitution through a constitutional convention involves several steps, two of which have already been taken:

1. The Montana Legislative Council and the Montana Constitution Revision Commission studied the constitution and agree that it needs substantial revision and improvement.

2. The Montana Legislative Assembly decided by a two-thirds vote to submit the Referendum 67 to call a constitutional convention to the vote of the people in November, 1970.

There are five more steps that lie ahead and at each one the decision to move forward must be made by the people.

3. The people will vote in November on Referendum 67 to call a constitutional convention.

4. If the convention referendum is approved, the next legislature will set the date for election of delegates by the people, the date and length of the convention, and the salary of the delegates.

5. The people elect delegates to the convention.

6. The convention meets and may propose revisions, alterations, or amendments to the constitution.

7. The people vote to approve or reject the proposals of the constitutional convention.

Constitutional Convention Referendum

It is very important that Montanans understand Referendum 67. It is the most important issue the voters will consider this fall.

In order for voters to determine whether to vote for convening a constitutional convention, it is necessary to answer two basic questions:

1. Is it necessary or desirable that the Montana Constitution of 1889 be reviewed by a constitutional convention?

2. If it be concluded that a review and revision is desirable, is a constitutional convention the best means of amending the Montana Constitution at this time?

In answering these questions, it is neither necessary nor proper to propose specific amendments. The only issue before the electorate in November, 1970 is whether a constitutional convention shall be convened. By its nature, a convention is a deliberative body, a study group in the public eye, with an ancillary effect of educating and informing the electorate with the assistance of the news media. The proposals of the convention must be submitted to the electorate for approval or rejection. On its face, the convention can yield only advantage - a desirable check-up and audit of the state and local government machinery after over 80 years without such an examination.

Why a Convention?

The Montana Constitution Revision Commission recommends that a constitutional convention is the most feasible and desirable method of accomplishing comprehensive constitutional revision in Montana.

There are a number of reasons why it is preferable to review and amend the 1889 constitution by means of a constitutional convention instead of the alternative amendment method:

1. The constitutional convention is a means which is available at this time. The Montana Legislative Assembly by a two-thirds vote in both houses provided for the submission of

the convention referendum--Referendum 67. Approval of the convention referendum would direct the Forty-Second Legislative Assembly to call a convention to revise, alter, or amend the constitution of Montana.

2. A convention is called by the PEOPLE, delegates are elected by the PEOPLE, and its proposals are approved or rejected by the PEOPLE. The convention would be representative of the people of Montana. The delegates would be elected from house of representative districts on the basis of the new apportionment of seats to be determined after the 1970 census by the Forty-Second Legislative Assembly. Each delegate would have to be at least 24 years old, a citizen of the United States, and a resident for one year in the county or district from which elected. The convention can be expected to attract competent delegates. The experience of other states shows that most delegates are public-spirited citizens interested in the state's welfare, usually civic leaders who are well known and respected in their communities. Partisan pressurss are slight, as the delegates do not have to seek re-election. The atmosphere of a convention encourages constructive debate and action.

3. The entire constitution should be reviewed in the course of the amending process. There is a great deal of interplay among the various articles of the Constitution; and single legislative amendments that simply propose to amend one article or section may well create an inconsistency which would not exist in an overall review of the Constitution. The entire document should be looked at as one piece to eliminate discrepancies and conflicts. Furthermore, some amendments may seem so technical and prosaic that public interest could never be aroused in them as individual propositions, and yet they are necessary to our welfare. A convention can muster interest and support in the improvement of these working details which enable our government to function.

4. A constitutional convention will render all provisions subject to the spotlight of press and public and thereby minimize the chances of "special interest" provisions surviving. The convention will be constantly subject to public audit through news reports of its proceedings. In addition, the fact that the Convention will be a representative group will prevent domination by any small group.

5. A convention would increase citizen understanding of our

government. A significant by-product of the convention would be the opportunity for all people of Montana to focus on the constitutional foundation of our state. Almost a century has passed since the 1889 constitutional convention. The Commission agrees with the founders of our state that "The people of the state have the sole and exclusive right of governing themselves. . .and to alter. . .their constitution and form of government, whenever they may deem it necessary. . .(Montana Constitution, Article III, Section 2). This right in the Montana Bill of Rights can be given meaning for and by this generation through the process of a constitutional convention.

Why Not Single Amendments?

Since the Montana constitution was adopted in 1889, the only method used to change that document has been amendment process. Amendments initiated in the Legislature are traditionally limited and technical in nature. As a result changes in the Montana constitution have been narrow in scope and have not changed the fundamental principles of the Montana constitution.

Single amendments, provided for in Article XIX, Section 9, may be proposed in either house of the Legislative Assembly and if a proposed amendment receives a two-thirds majority vote in each house, it is placed on the ballot at the next general election. Not more than three amendments may be submitted at each election and ratification requires a majority of these voting on the amendment. When ratified, an amendment is incorporated in the constitution, either, replacing the section reprealed or adding a new section. There are problems with the single amendment approach:

1. Thirty-four single "piecemeal" amendments since 1889 have not kept the Montana constitution up to date. The number of amendments proposed has increased sharply since Montana's legislative reapportionment of 1965, averaging 30 in each of the last three legislative sessions. Only five state constitutions dating from the 19th century have been amended fewer times than the Montana document.

2. The three-amendment limitation restricts the number of amendments that may be placed on the ballot. This

probably works to defeat more amendments in the legislature than necessary because legislators vote against an amendment they are otherwise in favor of to advance one of greater preference. Only six other states have a limitation similar to Montana's and three of these have restrictions less stringent than the three-amendment limit in Montana.

3. Legislative and public opinion are not oriented toward comprehensive amendments. However, comprehensive amendments, as long as they are within the single-purpose requirement of the constitution, are permissible in Montana. In addition, a comprehensive amendment may affect scattered provisions of the constitution and it is difficult to draft such amendments. Complete revision of a constitution through comprehensive amendments would probably take several legislative sessions and it has proved to be difficult in other states to sustain momentum and public support of amendments over a number of years.

4. Voters have rejected recent fundamental amendments. New doubts over the feasibility of the amendment route for constitutional revision were raised in 1968 by the defeat of three amendments, primarily because these amendments encompassed changes more fundamental in nature than most proposed amendments.

5. Members of the legislature are not chosen for their views on proposed constitutional changes and the people do not give them a direct mandate in this direction. Legislators are understandably preoccupied with legislative matters and have insufficient time to study the issue in constitutional proposals. In addition, the legislature can hardly be expected to give objective consideration to constitutional proposals that affect its own structure.

6. Voter participation on amendments is low. Since 1950, Montana voters have accepted approximately 75% of the amendments that reach the ballot--five percent higher than the national average. But even so, actual voter participation on amendments is low. Approximately one-fourth of the people who vote in elections do not vote on proposed amendments. It is believed one of the reasons for this fact is lack of public information on each amendment and that voters choose not to vote therefore, or cast their ballots indifferently.

GUIDELINES FOR CONSTITUTIONAL CHANGE

The following guidelines for constitutional change were offered by the 1967 National Governors' Conference Study Committee on constitutional change:

1. The state constitution should express only fundamental law and principle and omit procedural details except, of course, for procedural provisions in the Bill of Rights.

2. Outmoded, obsolete detail should be removed from the constitution, and material relating to a common subject should be placed in the same article.

3. A constitutional commission composed of persons representing the public as well as government is the best instrument for studying and recommending revisions under (1) and (2) above.

4. Revision of the executive, legislative, and judicial articles should be made on the basis of a "whole article" rather than a piecemeal approach.

5. The legislature should be permitted to meet in annual sessions of unlimited length.

6. More authority, fiscal and otherwise, should be granted to local governments, in order to allow governors and legislatures to concentrate on state problems.

7. The amendment process should be liberalized to allow legislatures to submit more amendments of greater scope and with more frequency; submissions of whole articles dealing with the same subject would permit more rapid constitutional improvement.

8. One of the most challenging areas of constitutional reform in the fiscal article, which is often a jungle of lengthy and tangled provisions and restrictions; this article should have high priority in revision, and the legislature should be allowed the widest possible range of tax and appropriation alternatives.

9. There should be provision, in addition to legislative option, for placing before the voters at stated intervals the question of whether a constitutional convention shall be called; voters should also have the power, through

the initiative process, to call a convention and propose amendments.

METHODS OF CONSTITUTIONAL CHANGE

Purpose of State Constitutions

Americans have viewed their constitutions not only as statements of law, but also as symbols of their highest political ideals. As symbols, constitutions should receive the support and respect of all the people. The need for widespread citizen understanding and appreciation of our constitutional tradition has never been greater than today. Nor has the need been more important than for general citizen interest and participation in current political affairs.

Citizen involvement measures the vitality of a democratic system. Constitutions may contribute to citizen involvement, first as symbols of our political ideals, and second, by providing political systems simple in detail and without unnecessary complications in the way they function. If the people are to respect and take an interest in their government, they must under stand it. If they are to participate, they must know how to participate and to feel their participation can be meaningful.

Constitutionally, the federal system involves two levels of government, federal and state. Each level has an authority independent of the other; each has its own functions and responsibilities. The Kestnbaum Commission report to the President of the U. S. in 1955 pointed out that state constitutions contribute to the weakening of the states in our federal system by restricting the scope, effectiveness and adaptabllity of the respective state and local governments. These "self-imposed" constitutional limitations make it difficult for many states to provide all of the services their citizens require and consequently are often the underlying causes of state and municipal pleas for federal assistance. Recent studies identify these weaknesses and others in Montana state and local government. A Montana Legislative Council study in 1968 concluded that less than one-half of the provisions of the 1889 constitution are adequate for present needs.

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IV

ISSUES FOR A CONSTITUTIONAL CONVENTION

INTRODUCTION

". . .many State constitutions restrict the scope, effectiveness and adaptability of State and local action. These self-imposed constitutional limitations make it difficult for many States to perform all of the services their citizens require, and consequently have frequently been the underlying cause of State and municipal pleas for federal assistance. . ."

Commission on Intergovernmental Relations, "A Report to the President for Transmittal to Congress" (1955)

The purpose of this section is to stimulate independent thinking, and not to draft a proposed constitution. To the extent that a convention and the rest of us are well-informed, we shall avoid needless controversy, both in the writing of a new constitution and later in the voting on it.

As to a Constitutional Convention, ours could benefit from Montana's 81 years' experience under the present Constitution and be in the advantageous position of examining:

1. the studies of the Montana Legislative Council and the Montana Constitution Revision Commission;

2. amendments that have been proposed to the Montana Constitution;

3. the constitution of 49 other states;

4. the recent work of constitutional conventions in other states.

It should also be stressed that the work of a Constitutional Convention is not final. It is not the final authority on what will be or not, the constitution of Montana. The final authority is the voter.

The Constitutional Convention only has the authority to review the entire Constitution and to propose "revisions, alterations, or amendments." It must then submit the proposals to the voters for ratification or rejection.

The Montana Legislative Council presented, in 1968 after nearly two years of study, the conclusion that in many places of the Montana Constitution there are "provisions which invite subterfuge, provisions which are archaic, provisions which are ambiguous, provisions which are statutory, and provisions which place serious limitations on effective state government."

The topics introduced in this section are: What Is A Constitution, The Purpose of a State Constitution, The State Bill of Rights, Suffrage, The Legislature, The Executive, The Judiciary, Local Government, Public Finances and Education.

WHAT IS A CONSTITUTION?

"A constitution states or ought to

state not rules for the passing hour,

but principles for an expanding future."

Justice Benjamin Cardozo

Constitution - An American Invention

When the Founding Fathers of the United States, the first

democratic republic of modern history, desired to write their ideas about government on paper, they found few guidelines. Even Great Britain had no written constitution and does not have one, even today. Concepts abounded--in the Colonial charters, in French assemblies, in the Mayflower Compact, in the Declaration of Independence. But the framers of the Articles of Confederation were doing something new in the history of governments--putting basic principles, powers, and limitations into written, binding form.

"That to secure these rights, Governments are instituted among men, deriving their powers from the consent of the governed" was a ringing statement that proved a challenge to get it translated into a structure of government. And Americans demanded the protection of a written document as they embarked on the great adventure.

Early State Constitutions

The first state constitutions were drawn before there was a true federal government. Further, the states were mindful of their experiences of subjugation under the English monarchy and they were proud of their independence. They were careful, therefore, about delegating powers in the Articles of Confederation other than those involving defense and essential cooperative services.

The fledgling states also used colonial experiences rather than the model of the mother country and thus were influenced by the thinking of American leaders--John Adams, R. H. Lee, James Madison, George Mason, and John Dickinson. Strong philosophical opinions on separation of powers, universal suffrage, individual liberty, and governmental stability were thus reflected in the early state constitutions. Later, the states surrendered many powers to the federal system, but their pride in having existed previous to the formation of a national government affected American politics for many years, even to the concept of retaining state sovereignty.

In 1789, the U. S. Constitution went into effect as a response to the needs of the time and was expanded by the Bill of Rights developed largely out of complaints from the states who wanted protection in writing from the centralized government they were accepting.

State Constitutions Today

The trend toward more authority at the national level of government has been going on ever since that time of the original 13 states. The intensity of this trend ebbs and flows with economic-political conditions, but the gradual development of a strong central government has changed from the original concept of federalism as one in which states grant powers to a central government. Now it is the states which demand more and more from the national government in part, as a result of population shifts and expansion, development of problems (such as transportation) which ignore state lines and state solutions, interpretations by the U. S. Supreme Court of the powers granted to national government, emergence of spheres of action not anticipated by those who drew the U. S. Constitution, desire by most states to assign problems to the national level and, especially in recent years, the inability or unwillingness of states to cope with problems at the state level.

Many observers and students claim that today's state constitutions are generally overly-detailed, products of the last century. For one, they try to describe all the functions left to the states by our federal constitution, which is written with simplicity, and contains statutory provisions which should not have been frozen into constitutional law. Many mistook the purpose of a constitution by trying to write protections against every contingency, from officials to "greedy" warehousemen.

PURPOSE OF A STATE CONSTITUTION

Criteria for a State Constitution

If one assumes that states are to continue as partners in a federal system, one must assign high priority to a state constitution which will permit effective action by the state. This raises questions. What are the characteristics of such a document? What criteria can be applied to its development and evaluation?

First, definitions of the functions of a state constitution. Generally, there is agreement that the purpose of a constitution is to set forth the principles of government, establish the elements of a structure of government, distribute powers, and define relationships.

There are also philosophical functions: to preserve American tradition, to establish conditions under which the traditional concept of the importance of the individual can operate, to generate confidence in the people, to encourage participation of the people in their government, to give continuity to the American commitment, to implement the American dream--all are mentioned by scholars.

There is a contemporary function: to create a mechanism which can and will function in the solution of current problems.

Listed below are some of the criteria for a state constitution suggested in current literature. A discussion of each may suggest ways of refining standards of judgment.

1. A constitution is fundamental law, not a set of ordinary statutes. What are fundamentals? What is minimum amount of detail necessary, for example, to describe separation of powers? suffrage? relationship between branches of government?

2. A constitution is founded on majority rule with protection of the minority. What channels are provided for expressions of opinions and what protections to the minority are needed in a constitution?

3. Checks and balances are necessary to maintain our form of government. What is meant by checks and balances? Do these ever interfere with responsive government?

4. A constitution is flexible and permits response to new problems and conditions. What language provides for flexibility? How is the amendment process related to this criterion?

5. A constitution should be simple with few details. By details are meant specific rules and regulations or for example, extensive descriptions of functions of local government. But how do details appear? What effect do details have on court decisions? on public understanding? on initiative and creativity of state officials? on speed of response to problems?

6. A constitution should be written in simple language, easily understood by the people and clear as to intent.

7. A constitution should be reasonably easy to amend. What is the purpose of amendment? How easy should amendment be? Who should be involved in the amendment process? What precautions are necessary?

8. A constitution should make provision for coping with current and emerging problems and anticipate as many needs as possible. What kind of problems lend themselves to constitutional solutions? What general approaches can be developed to give latitude for new situations?

9. A constitution should make clear assignment of responsibility without erecting barriers between and among departments or without creating obstacles to new response patterns. What general statements of responsibility can meet these criteria?

10. A constitution must equip the state to assume and execute its responsibility as a state in the federal system. What provisions can be made to fit the state for this role? What kinds of problems are now involved?

THE STATE BILL OF RIGHTS

"A bill of rights is, in a very real sense, an expression of political faith and ideals--it set the bounds of political authority and reserves to the individual certain freedoms believed essential to human happiness. It guarantees protection for those areas of individual

difference necessary for the operation of popular government and political democracy.

"Civil Rights and Liberties" A staff paper for the Alaska Constitutional Convention.

THE DECLARATION OF RIGHTS reflects the theories of a free people and lessons of history.

State bills or declarations of rights largely reflect political ideas of the 17th and 18th centuries, ideas which found their most dramatic expression in the Declaration of Independence, the Virginia Bill of Rights of 1776, and the Bill of Rights of the United States Constitution. Behind these declarations is a proud heritage that may be traced to the historic English Magna Carta of 1215 and colonial declarations of 1765 and 1774. In keeping with this tradition, the people will want to reconsider periodically their civil liberties, expanding these as new concepts of human rights are accepted, and modifying those time-honored but perhaps obsolete practices that fail to meet the challenges of the day.

Today when both national and state governments are involved in the daily life of the citizen, a bill of rights may have added importance. Complex economic, social and international developments have brought government at all levels into intimate contact with the citizen both at work and at play. Thus at a time when the improper use of governmental power through huge bureaucracies is a real and not an imagined threat, many experienced observers feel that a strong bill of rights is vital. It may serve as a restraint upon government officials as well as upon the whims of transient majorities who, in the face of vast domestic and international strain, may be tempted at times to ignore basic rights.

THE DECLARATION OF RIGHTS is a statement of the people and serves the purpose of protecting the citizens' civil liberties.

The Montana Declaration of Rights contains three fundamental features:

1. A statement of political theory on the purposes of government;

2. Provisions on the substantive rights of expression (speech, press, religion, assembly, petition) and property rights;

3. Provisions on the procedural rights of persons accused of criminal acts or involved in civil proceedings.

Most citizens are generally familiar with the guarantees of individual freedom in the Bill of Rights of the United States Constitution. However, not all of the provisions of the Federal Bill of Rights are applicable to the state governments. Until the ratification of the Fourteenth Amendment to the United States Constitution, the Bill of Rights was construed to restrict only the federal government. Thereafter, however, the Supreme Court has held that certain rights protected in the Bill of Rights are so "fundamental" and "implicit" in the concept of ordered liberty that the "due process" clause of the Fourteenth Amendment mandates that state governments, as well as the federal government, obey them. Thus, for example, the First Amendment guarantees freedom of religion, speech, press and assembly, and the Fourth Amendment's protection against unreasonable searches and seizure have been held to regulate state, as well as, federal action. On the other hand, the Fifth Amendment protection against double jeopardy and the right to indictment by a grand jury and the Seventh Amendment right to trial by jury in all civil cases have been held not to apply to the states. Therefore, in these latter cases the states are free to impose their own limitations. Thus a state needs a Declaration of Rights in its Constitution.

A second reason advanced often for a strong state declaration of rights is the responsibility of the states to enlarge upon the protections in the federal constitution. The states are closer to and more directly responsible for the protection of individual freedom and property. There have been many suggestions lately that the states can resist the expansion of federal power and revitalize their own governments by playing a more immediate and active role in providing for the welfare and security of their own citizens.

THE MONTANA DECLARATION OF RIGHTS is adequate in its present form, but should be reviewed.

While the Montana Constitution prescribes the guarantees in the areas of freedom of speech, press and religion and assures defendents the fair administration of justice, the Constitutional

Convention may want to consider that the changing circumstances and complexities of our times effect these basic liberties. An example of this is in the area of wiretapping and electronic eavesdropping, and rights of privacy. This subject is not now, according to experts, covered in the constitutional guarantee against unreasonable searches or seizure at either the state or federal level. The tapping of telephones is banned by federal law, but both national and state officials recognize that wiretapping in its various forms does, in fact, go on. Limited and restricted use of listening devices is advocated by many lawmakers since modern communication techniques and its use by criminal elements present a particular dilemma to law enforcement officials. Yet the right of privacy must also be protected.

A CONSTITUTIONAL CONVENTION will also consider, in all probability, inclusion of a guarantee of civil rights regardless of race, color, religion, national origin or ancestry, as is included in the Michigan Constitution of 1964. There is no written guarantee in the Montana Constitution that civil rights shall be extended to all men regardless of race.

SUFFRAGE

"All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Montana Constitution, Article III, Section 5

SUFFRAGE PROVISIONS are the major tool of citizen control of government.

The state constitution should firmly protect the essential political rights of the citizen, leaving to legislation, within a broad constitutional framework, responsibility for prescribing details of the electoral process.

The assumption that the broadest possible participation in the electoral process is good is fundamental to democratic theory. Few would argue with the statement that all who have the capacity should be permitted to participate in the selection of public officers and in the making of public policy. The argument will come over what constitutes "capacity." In general however, it is important that voter qualifications be clearly and immediately related to the exercise of the franchise and specifically dealt with in the constitution. Age and residence are the most obviously reasonable bases for qualifying voters. Citizenship, literacy and absence of criminal record, and sanity have also been widely accepted.

SUFFRAGE PROVISIONS regarding residency requirements should be reviewed.

Under the Montana Constitution a person is qualified to vote for all officers and on all questions, except questions concerning "the creation of any levy, debt or liability," if he:

1. has attained the age of 21 years;

2. is a citizen of the United States,

3. has resided in this state for one year.

Local residence requirements are determined by the legislature and currently the law provides that all qualified voters of the state who have resided in the city or town for six months and in the ward for thirty days are entitled to vote at any municipal election.

The Presidential Commission on Registration and Voting Participation created in 1963 compiled a list of 21 standards for voting requirement. Among these the Commission recommended that:
1) state residence requirements should not exceed six months,
2) local residence requirements should not exceed 30 days, and
3) new state residents should be allowed to vote for the President.

The Montana Legislative Council concluded that state residence requirements should be set at six months and local residence requirements should be fixed by statute rather than by constitutional provision.

The Model State Constitution of the National Municipal League suggests that a constitution should set a maximum local residency requirement of three months and that the legislature be permitted to establish minimum periods of local residence such as county, town or election district residence.

Proponents of a reduced residency requirement argue that a three month requirement seems justified in an era of extremely high population mobility combined with rapid means of communication whereby voters may quickly inform themselves of the issues and thus meet the criterion of awareness.

SUFFRAGE PROVISIONS regarding the taxpaying requirement is in violation of the Supreme Court's interpretation of the United States Constitution.

A Constitutional Convention would be able to consider the taxpaying provisions as qualifications for voting in elections. These qualifications are applicable only to elections on local bond issues, tax levying, and bond and tax levying issues for school districts. In June, 1970 the United States Supreme Court handed down a decision declaring taxpaying provisions as a qualification for voting in any national, state or local election as unconstitutional. In view of this decision, the taxpaying provisions, although they will remain in the Montana Constitution until repealed, may not be used as a voting qualification.

SUFFRAGE PROVISIONS regarding age qualifications should be reviewed.

The traditional voting age is 21 years, but four states have established lower age limits--two old states, Georgia and Kentucky, at eighteen and the two new states, Alaska, nineteen, and Hawaii, twenty. Most agree that it is nearly impossible to prove that one age is better than another, however some arbitrary line must be drawn with respect to age. While neither 21 nor 18 is a magic number, a choice will have to be made. The really pertinent question concerns whether the younger voter would have sufficient maturity, interest and awareness to appreciate the significance of the process in which he is engaging.

Montana voters will be voting on a constitutional amendment lowering the voting age to 19 in November, 1970. In addition, Congress has recently passed legislation lowering the voting age to 18 for all national, state and local elections. This new

law's constitutionality, however, has not yet been tested in the courts. Undoubtedly the outcome of the vote on the Montana Constitutional amendment and of a court case testing the constitutionality of the new national law will provide direction for a Constitutional Convention in Montana as it considers this question.

A CONSTITUTIONAL CONVENTION would provide the opportunity for each of these questions to be publically discussed and considered. It will be the responsibility of the delegates to the convention to examine in detail these problems to try and find solutions to them and to offer those solutions in a modern constitution that will stand the test of many years in the future.

THE LEGISLATURE

"The people don't control the legislature; the constitution does. The constitution not only restricts the legislature's power to enact laws, but also severely limits the time which the legislature has to consider the problems of Montana."

James P. Lucas, Speaker
Montana House of Representatives

LEGISLATIVE PROVISIONS written into the Montana Constitution in 1889 are inadequate today.

The Montana Constitution may have created a weak legislature which is unnecessarily hampered by constitutional rules governing its procedures and constitutional restrictions on its powers. Some think, too, the constitution curbs the legislature in its crucial role of law-making and policy determination and thus the constitution also curbs the power of the people whom the legislature represents.

LEGISLATIVE PROVISIONS may not allow sufficient time for the legislature to manage the state's business.

The paramount restriction on the legislature is the constitutional limitation on the length and frequency of legislative sessions. The economy of a 60-day biennial legislature, originally set when Montana was still a territory:

1. may result sometime in hastily drawn bills;
2. does not always provide adequate time for committee consideration, public hearings or formal action on bills;
3. creates an atmosphere sometimes difficult for calm consideration;
4. does not allow time for many interested citizens to become informed on the work of the legislature;
5. can make the legislature more susceptible to pressure group lobbying;
6. generally may lower the quality of legislation approved by the legislature.

Consistently, the volume of legislative business has required the legislature to extend beyond the present 60-day constitutional limit. Attempts to reduce legislative delay, such as early introduction of bills, have not substantially increased the time necessary to complete the legislative business of the state.

LEGISLATIVE PROVISIONS regarding the structure and apportionment of the legislature should be reviewed.

The Montana Constitution provides for a bicameral legislature, does not limit the size of either house, and provides that the legislature shall "revise and adjust the apportionment for representatives and senators" on the basis of each Federal Census. The Constitutional Convention may consider a constitutional limit on the size of the legislature, the number of districts, and the advisability of a two-house legislature.

LEGISLATIVE PROVISIONS contain numerous provisions which are statutory rather than fundamental.

Statutory detail in the Montana Constitution includes provisions on the structure and duties of state administrative agencies, procedures for the administration of state funds, regulations of corporations, structure and procedure for county government, method of selection and removal of judges, and administration of property tax assessment. All of these areas are statutory in nature and are subject to the need for frequent amendment and revision. Montanans could be served better if statutory provisions were provided for by statute instead of being frozen into the constitution.

Some experts claim that the Montana Constitution has been enlarged to an indefensible length by the inclusion of these statutory provisions, and as a result the idea of a constitution as fundamental law and a foundation of government has been lost from sight.

A CONSTITUTIONAL CONVENTION could consider improving the legislature. A convention could remove those sections that impede the legislature from doing its work effectively and responsibly and add to the expense in both time and money. Many procedural rules now in the constitution could be provided for by House and Senate rules adopted by the legislature.

THE EXECUTIVE

"As it is now, the chief executive cannot truly govern or administrate. One of the means of changing this would be through executive reorganization in conjunction with constitutional revision."

Governor Forrest H. Anderson

EXECUTIVE PROVISIONS hinder responsible and efficient functioning of the executive branch of government.

In our democratic society an executive branch of government should be organized with two main objectives: 1) It should be politically responsible to the people through the election process, and 2) it should be organized to perform with maximum effectiveness and efficiency the tasks assigned to it by the legislature. Both of these objectives--responsibility and efficiency--are prevented, often by an executive branch of sprawling and uncoordinated agencies.

EXECUTIVE PROVISIONS create a fragmented executive structure beyond the effective control of the people, the legislature, or the governor.

The Montana executive-administrative branch of government consists of over 160 officials, boards, bureaus, and commissions. Even though the governor is vested with the supreme executive power of the state and it is his duty to see to the faithful execution of the laws, the actual number of independent officers, boards, bureaus and commissions which have little or no direct connection to the governor's office often prevents the governor from providing effective leadership in state government.

A CONSTITUTIONAL CONVENTION could consider improving the quality of state government by making executive and administrative agencies, boards and commissions responsible to the governor as the chief executive of the state. This would not only strengthen state government by providing some insurance that the governor's and legislature's policies would be carried out, but it could improve citizen control over state government.

THE JUDICIARY

"The judicial system designed for Montana in 1889 is not adequate for Montana in

1970. Our court system was designed for the days of slow transportation and simple problems, not for today."

James T. Harrison
Chief Justice, Montana Supreme Court

JUDICIAL PROVISIONS written into the Montana Constitution in 1889 contain the basic framework for the court system in Montana.

The Montana Constitution provides for a three level court system consisting of the Supreme Court, district courts and justice of the peace, police and municipal courts. There are five Supreme Court justices, elected on non-partisan ballots. At the district court level 18 districts have been established with 28 district judges elected on non-partisan ballots. There are also approximately 230 justices of the peace and police judges elected on partisan ballots.

JUDICIAL PROVISIONS in the Montana Constitution need to be reviewed.

Our nation and state have witnessed in recent years a loud and persistent cry for reform of the judicial machinery of government. There is little dispute about goals. "Equal justice under law" expresses the highest ideal of our democratic society. All institutions and activities of democratic government ultimately rest upon a foundation of respect for law, and respect for law cannot exist without an effective and impartial judicial system.

The main emphasis of the judicial article of a state constitution should be on the establishment of a unified judicial system, free from a mass of separately established courts. The judicial article should contain only those provisions necessary to create the state court system, assure its independence and provide for its effective and efficient operation. Constitutional creation of a number of different courts, along with the definition of their jurisdictions, leads to a variety of difficulties. Court reform often becomes either a matter of piecemeal constitutional amendment, or is not attempted at all because of the difficulties involved in integrating existing courts into any kind of rational scheme.

JUDICIAL PROVISIONS regarding the inferior courts are inadequate; they have prevented the development of small claims courts for Montana citizens.

The shortcomings of the justice courts and police courts are becoming increasingly severe. Following is a summary of the problems facing these courts:

1. A multitude of courts and judges. At this court level alone, 230 people are involved in dispensing justice.

2. Lack of training and skill. The overwhelming majority of justices of the peace and police judges have no legal training and some do not have the knowledge to decide on many problems presented.

3. Lack of court rooms and facilities. Most justices of the peace and many police judges have no court rooms and hold court in kitchens, offices, grain elevators, garages and other places of business.

4. The fee basis of compensation. The majority of justices of the peace are paid a fee for each case they handle. Since a law enforcement officer generally has a choice between at least two justices of the peace in any case, he may choose the judge to whom he takes the matter and who, therefore, receives the fee. This creates problems of income and power.

5. Incompleteness of civil jurisdiction. Justices of the peace have legal jurisdiction over cases involving smaller sums (up to $300) but the reports indicate that few such cases are ever handled. This appears to be due to the intricacy of the court procedures, the necessity for hiring legal counsel at an expense which is prohibitive, and lack of faith by prospective litigants in the capacity of these courts. Legal authorities say a small claims court would improve access to the judicial system for persons with minor civil cases.

JUDICIAL PROVISIONS regarding the selection and tenure of justices need reviewing.

The recruitment as well as retention of outstanding men and women to staff the courts is among the basic requirements of a sound judicial system. The National Municipal League states that state

constitutional provisions governing selection and tenure of judicial personnel are among the more severely criticized sections of state constitutions.

The Model State Constitution of the National Municipal League strongly criticizes the practice of selecting judges through direct elections. It is pointed out that there is considerable, if not unanimous, agreement that an appointive judge is preferable to an elective one because it enhances judicial independence. Also, a judicial candidate cannot--and usually does not--run for office in the same manner as candidates for legislative and executive office. Moreover, the attributes that make for good judicial qualifications and temperament are not appropriate subjects for meaningful public debate or for a considered vote of the electorate. The election of judges is thus commonly based on irrelevant considerations such as party label (even in non-partisan elections) rather than on any considered judgment as to qualifications for judicial office.

There have been a wide variety of alternatives to direct election of judges on one hand or executive appointment on the other. For example, the "Missouri Plan" is a compromise which provides, in essence, that judges be appointed by the governor from a list of nominees provided by a nominating commission and, thereafter stand for re-election against their records in non-competitive elections. The "Missouri Plan" is only one of many alternatives, which could be considered by a Constitutional Convention. Ideally, the convention would remove any constitutional roadblocks to the legislature adopting, if it sees fit, the so-called "Missouri Plan", or some variant.

A CONSTITUTIONAL CONVENTION could review all proposals for changing the structure and procedures of the judicial system which have come from the legal profession, the Montana Legislative Council, and the general public. In summary, a Constitutional Convention could consider:

1. the establishment of a two-level court system as opposed to the three-level system currently provided for, or modernization of the three-level system;

2. the establishment of a small claims court system and procedure;

3. justices of the peace, police and municipal courts;

4. improving the quality of all legal proceedings to the district court level;

5. permitting the expansion of the number of Supreme Court justices to seven;

6. providing for a system of administration within the court system;

7. vesting the legislature with authority to provide for the election or other method of selection of justices and judges;

8. allowing for the appointment, rather than the election, of the Clerk of the Supreme Court and the clerks of the district courts;

9. permitting the legislature to provide for censure, suspension, removal, or retirement of justices and judges, in addition to the present methods of impeachment;

10. considering the provision about election of county attorney and that the legislature may provide for district attorneys.

LOCAL GOVERNMENT

"The people ask the mayor and council to take care of cities and towns, but in too many cases the aging state constitution won't let them do the job properly. No mayor or council is free to always choose the course best suited to their particular community because of constitutional restrictions."

John McLaughlin, Mayor of Great Falls
President, Montana League of Cities and Towns

"County government is increasing, not declining, but the constitution does not give county officials the authority they need to meet new problems. Few people are aware that an outmoded constitution, more than anything else, is responsible."

Burt L. Hurwitz, County Commissioner,
Meagher County
President, Montana County Commissioners
Association

LOCAL GOVERNMENT is denied control over their own affairs by the Montana Constitution.

The Montana Constitution prevents effective local control over local government by vesting authority over local government in the state legislature. Also, it prevents the legislature from providing effective financial aid to cities, towns and counties, and contains many restrictions on the powers of local governments. Stripped of the freedom to act in purely local matters, cities, towns, and counties have often been forced to encumber the legislature with a maze of bills of a local nature.

Local government is increasing in importance, but if local government in Montana is to cope with the impact of the new federalism, its basic legal authority must be studied and a proper framework developed.

LOCAL GOVERNMENT on the county level is denied legislative powers that are permitted municipalities.

The constitution denies to our counties the legislative power that is permitted municipalities. Counties are performing an increasing number of functions of government. Many functions once considered properly those of municipal corporations are now, even in rural areas, performed by special districts created by counties.

The number and variety of functions varies from one county to the next, but in recognition of the evolution of functions performed now by many of Montana's counties, the constitution should free the legislature to delegate activities to whichever unit of local government is best capable of performing the local service.

LOCAL GOVERNMENT is becoming a burden to the legislature due to constitutional restrictions.

Under existing law, there exists a state-local relationship in Montana in which all units of local government have had to justify every action by reference to provisions of law defining both powers and procedures. As a result, the legislature is burdened with a maze of local government bills, and for local government in Montana, statutory law has become a voluminous and intricate handbook, sharply inhibiting the response of local government to local needs.

A CONSTITUTIONAL CONVENTION would permit the writing of a local government article that could clearly state that it is the intention of the people to vest in local government maximum freedom to deal with local affairs. At the same time, the article could leave unimpaired the power of the legislature to enact laws of statewide or regional concern. The convention could specifically authorize cooperative agreements between units of local government and provide for a grant of residual power to all units of local government. By approving such a provision, the delegates in convention could in effect require future legislatures to distinguish local matters that are of statewide concern and subject to state law and those matters of local government that can best be handled at the local level. As a result, local government would exercise any legislative power not denied it by general law. This concept of shared powers would mean that local governments, both counties and municipalities, would be free to act on any problem unless definite state action had been taken. Such a streamlined article on local government would free the legislature of the burden of acting on a host of purely local bills so that it can concentrate on matters of importance to the whole state and would free counties and municipalities to deal effectively with matters of local concern.

"Some of the fiscal problems facing state and local governments today stem from failure of the states to remove constitutional and statutory limitations that circumscribe their freedom of action. It is often because of these limitations that state and local governments turn to the national government for assistance."

Commission on Intergovernmental Relations, "A Report to the President for Transmittal to Congress" (1955)

FISCAL PROVISIONS written into the Montana Constitution in 1889 are inadequate today.

The ability of the state to administer its financial affairs is hampered by constitutional provisions regarding budgeting, appropriation of funds, expenditure of funds, audit of expenditures, assessment of property, authorization of taxes, and investment of funds. For the most part, these provisions should be statutory matters, rather than procedural arrangements frozen into the constitution.

FISCAL PROVISIONS are the most complex sections existing in the Montana Constitution.

The complexity of the fiscal provisions is illustrated by extensive court cases interpreting the language of the financial sections. The extensive and ambiguous financial provisions in the constitution have frequently forced the Supreme Court, rather than the legislature, to become the policy-making body in the area of state and local finance.

FISCAL PROVISIONS are a principal limitation on the ability of the state to provide efficient, economical and necessary public services.

Financial limitations severely restrict the governor, legislature and local government from providing necessary public services financed adequately by an equitable tax structure. These constitutional restrictions rely heavily upon the powers of the legislature to tax, appropriate money, to incur and finance debt and to establish an administrative structure necessary to exercise these powers.

FISCAL PROVISIONS in the present Montana Constitution are often outmoded.

Many constitutional financial provisions contain outmoded approaches and procedures that are costly and inefficient. Many of these financial provisions and procedures could be provided for by law, rather than being fixed in the constitution.

In its simplest form, the problem of what to include in the constitution on taxation and finance is a test of one's belief in our system of representative democracy. It is difficult to reconcile a constitution containing a series of prohibitions and limitations upon the legislature's exercise of discretion in respect to taxation and finance with a real belief in representative democracy.

A CONSTITUTIONAL CONVENTION would afford the people an opportunity to clarify the present provisions on finance, consider increased discretion in the legislature over state finance, and at the same time retain adequate safeguards for the people's interest.

EDUCATION

". . .provision shall be made for the establishment and maintenance of systems of public schools, which

shall be open to all the children of said states, and free from sectarian control"

The Enabling Act (Congressional act providing for Montana to be admitted to the Union)

EDUCATIONAL PROVISIONS in the Montana Constitution contain the basic framework for the public school system.

The people of Montana, in 1889, embedded in the state constitution the clear responsibility of the Legislative Assembly "to establish and maintain a general uniform and thorough system of public, free, common schools."

The Montana Constitution also provides for a state board of education and a state superintendent of public instruction with powers and duties to be regulated by statute. The constitution contemplates the creation of school districts, provides safeguards for the earnings from federal land grants and permanent school funds, prohibits the use of public funds for any school controlled in whole or part by any church, limits the indebtedness of school districts to five percent of the value of taxable property in each district and provides for county superintendents of schools.

EDUCATIONAL PROVISIONS need to be reviewed.

In general, the educational provisions of the constitution are regarded as satisfactory, but a Constitutional Convention would want to consider several recommendations that were made by recent official studies. Some specific areas which might be reviewed are:

1. Superintendent of Public Instruction. Several studies have suggested that the superintendent of public instruction should be an appointive office of the state board of education, rather than a political elective office. In 26 states, state superintendents of public instruction are now appointed by the state board of education rather than elected.

2. County Superintendent of Schools. The Constitutional Convention could review the role and function of the constitutional office of county superintendent of schools. In some counties, it is virtually impossible to persuade anyone to serve as county superintendent of schools. If the office were removed from the constitution, the legislature could then provide by statute for the qualifications, status, and role of the county superintendent.

3. Separate Governing Board for the University System. The convention could consider establishing separate governing boards for the university system and the public schools. A Montana Legislative Council study showed that the Board of Education devotes only five percent of its time to primary and secondary education.

4. Constitutional Investment Restrictions. The convention could also examine the effects that constitutional investment restrictions have on the earning of the public school funds. The constitutional guarantee of the school funds against loss or diversion could be retained, but the present constitutional restrictions on investment of public school funds adopted in 1938 could be modified to permit the legislature to provide by law for sound investment and management of these public funds to produce the maximum amount of income.

5. Constitutional Limitations on Bonded Indebtedness. The constitution limits bonded indebtedness to five percent of the taxable valuation of a school district. Since valuations are not uniformly determined, the five percent debt limitation itself is not uniform, and financing of school construction is limited in counties where assessment ratios are low. The present constitutionally imposed debt limit does not provide a uniform protection to taxpayers because its effect is dependent upon the varying practices of the several county assessors. The convention could consider replacing debt restrictions with an authorization for the legislature to supervise the level of school district and other local debt.

A CONSTITUTIONAL CONVENTION would provide an opportunity to review the state's responsibility to provide for a system of public education. The present constitutional provisions could be evaluated and the necessary and desirable improvements be recommended by the convention to the people for their approval.